C McDougall

REPORTS OF

ELECTION CASES

By THOMAS HODGINS, Q.C.

PART V.,

DOMINION ELECTIONS, 1878,

Under "The Dominion Elections Act, 1874" (37 Vic., c. 9, Can.), "The Dominion Controverted Elections Act, 1874" (37 Vic., c. 10, Can.), "An Act to amend the Acts respecting Controverted Elections," 1875 (38 Vic., c. 10), "An Act to make more effectual inquiry into the existence of Corrupt Practices at Elections of Members of the House of Commons," 1879 (39 Vic., c. 10, Can.); And "An Act to amend the Act respecting the Elections of Members of the House of Commons," 1878 (41 Vic., c. 6, Can.)

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DOMINION ELECTIONS, 1878.

NORTH YORK.

BEFORE MR. VICE-CHANCELLOR BLAKE.

TORONTO, *23rd December, 1878.*

WILLIAM CROMWELL OLIVER *et al., Petitioners,* v. FREDERICK WILLIAM STRANGE, *Respondent.*

Practice—Deposit of security—Irregularity.

The security in this case was offered, in the shape of a Dominion note for $1,000, to the Registrar of the Court of Chancery, who stated to the petitioners' solicitors that he could not receive it, but directed them to make payment of it through the Accountant of the Court in the same manner as moneys were usually paid into court. The solicitors then paid the money into the bank to the credit of the matter of the petition, according to the usual practice of the Court of Chancery.

Held, That the deposit of the security, as required by the Act, was properly given.

The petition contained the usual charges of corrupt practices, and was filed in the Court of Chancery. The respondent filed preliminary objections to the petition, as follows:

That the petitioners have not, as required by the Dominion Controverted Elections Act, 1874 (37 Vic., c. 10, s. 8, subsecs. 4-7), on the presentation of the said petition, deposited with the Clerk of the Court, in gold coin or in Dominion notes, the sum of $1,000, or any sum, as security for the respondent's costs, and the other [illegible]ons in the Act referred to.

The petitioners moved to set aside the preliminary objections, and filed an affidavit of the petitioners' solicitors, stating that, when presenting the petition, they had offered a Dominion note for $1,000 to the Registrar of the Court of Chancery, who stated he could not receive it, but directed the solicitors to make payment through the Accountant of the court, in the same manner as moneys were usually paid into court under the practice of the Court of Chancery. The Dominion note was then paid into the bank to the credit of this matter, in the same

manner as moneys of ordinary suits in the Court of Chancery. The certificate of payment was as follows: "The Canadian Bank of Commerce, Toronto, 16th day of November, 1878.—$1,000. *Re* North Riding County of York Election, 1878. This is to certify that William C. Oliver and Abram L. Taylor have this day paid into this bank, to the credit of this account in the Court of Chancery in Ontario, the sum of one thousand dollars."

Mr. D'Alton McCarthy, Q.C., for the respondent.

Mr. G. D'Arcy Boulton for petitioner.

BLAKE, V.C.—This is not an objection to the petition. The main object sought by the Act is to have $1,000 deposited to answer any order that may be made as to costs or otherwise. This has been done. The money came virtually to the hands of the clerk, and he directed its deposit in the court, and it found its way there. The only irregularity then is, that the money was deposited to this particular account, but not headed with the general statement, "The Dominion Controverted Elections' Account of the Court of Chancery." Here the deposit was in the shape of a Dominion note.

The Act says, "the Clerk of the Court shall give a receipt for such deposit, which shall be evidence of the sufficiency thereof."

I overrule the objections, but I will not do so with costs.

SOUTH ONTARIO.

BEFORE MR. JUSTICE GALT.

WHITBY, *14th to 20th January, 1879.*

DANIEL MCKAY, *Petitioner*, v. FRANCIS WAYLAND GLEN, *Respondent.*

Gifts and Charities—Bribery—Offers.

The respondent gave certain gifts and charities to a religious community, a church, and certain local associations, none of which were political: the election was never mentioned.

Held, that where charitable donations are given generally, and not with a view to influence any individual voter, they will not vitiate an election. There must be such large and indiscriminate gifts as to leave no doubt on any one's mind that the effect had been to constitute general bribery; and there was no evidence of such gifts or expenditure in this case.

Semble, that s. 92 of the Dominion Elections Act, 1874, points to cases where money, or valuable consideration, is given to a voter, and not to a community generally.

Charges against the respondent, that he had promised an office to the son of a voter, and a contract to the voter himself, were contradicted by other evidence, and dismissed.

One P., some years before the election, claimed that the respondent was indebted to him, but the respondent denied all liability, and the dispute caused a coolness between them. One H., four months before the election, was employed by P. to collect another account from the respondent, and did so. H. stated to P. that as the respondent was in a good humor, it would be a good opportunity to get the old account settled, and asked P. if he would support the respondent in case the old account was settled. P. replied that he might promise what he liked. H. then took the account to the respondent, who looked it over and gave his note for it. H. and the respondent never referred to the election, nor to the settlement as affecting the election.

Held, that the respondent had not been guilty of bribery in this transaction.

A charge against an agent of the respondent, that he had promised to procure the office of police magistrate for one W., was denied by the agent and the respondent; and it further appearing that W. had acted on the committee, and voted, for the opposing candidate, the charge was dismissed.

The petition contained the usual charges of corrupt practices. The election took place on the 10th and 17th September, 1878.

Mr. D'Alton McCarthy, Q.C., *and Mr. T. G. Blackstock*, for petitioner.

Mr. Robinson, Q.C., *and Mr. Edgar*, for respondent.

The evidence affecting the charges of corrupt practices is set out in the judgment.

GALT, J.—The petition contained charges of bribery and corrupt practices by the respondent and his agents; it did not claim the seat.

There were in all fifty-three cases mentioned in the particulars, to which several others were allowed to be added during the trial.

The charges first proceeded with had reference to personal acts of respondent, viz.: A gift of trees to the Roman Catholic cemetery of the village of Oshawa; donations to a religious body belonging to that communion called "The Sisters;" gifts to rifle associations; money spent at picnics; and a subscription of $50 to discharge the debt on a church. The respondent was the only witness examined as to these charges, and stated that in January or February previous to the election, seeing the cemetery in a very bare condition, he had offered the Roman Catholic priest trees to plant if he wished them. The offer was accepted and the respondent ordered them, and on their arrival paid for them. The cost was $130. He stated that it was purely a voluntary offer on his part.

As regards charge No. 53, respondent admitted that he had in the winter of 1877 furnished provisions to "The Sisters" to the extent of $60; he stated also that he had been in the habit of giving them money when applied to, and had also paid the half of the taxes on their house, the other half having been remitted by the corporation.

As regards charges 48 and 49, respondent admitted that he had subscribed $50 to a Rifle Association for a special prize, to which a year or two before he had given $30. No reference was made to these latter charges, either during the case or in the summing up of the learned counsel.

As regards charge No. 52, respondent admitted that he had subscribed $50 in payment of a debt due on this

church. Nothing was said in reference to it during the case or in the summing up.

As respects money spent at the picnics, he admitted he had spent about $30 at one held by the Roman Catholics on 1st July; and on the same day he attended another held by the Sons of England Association, at which he spent the sum of $175. At this last there was, what appears to be very common now in the country, contests for prizes dependent on votes cast for particular persons. On this occasion there was one between himself and Mr. Gibbs, for a pitcher (worth some $40 or $50) to be given to the wife of the successful party. The persons voting paid a small sum of money for each vote; the respondent among others voted for himself, while others voted for Mr. Gibbs, among whom was a person named Dingle, hereafter mentioned, who cast no less than one thousand votes for him. The object of these contests was to raise money for the society, and I confess I can see no impropriety in what was done by the respondent. It is to be observed that none of those gifts or expenditures were made to any political association; they were, particularly as respects the Rifle Association, to bodies which, in all probability, were composed of men of both political parties. The respondent has also sworn that the election was never mentioned or alluded to in the slightest degree in reference to any of these gifts or charities, and no evidence was called to contradict him.

By section 92 of 37 Vic., chap. 9, every person who, directly or indirectly, by himself, or by any other person on his behalf, gives, lends, or agrees to give or lend, or offers or promises any money or valuable consideration, or promises to procure, or to endeavor to procure, any money or valuable consideration to or for any voter, or to or for any person on behalf of any voter, or to or for any person in order to induce any voter to vote or refrain from voting, or corruptly does any act as aforesaid, on account of such voter having voted or refrained from voting at any election, shall be deemed guilty of bribery.

The above enactment seems to point to any money or valuable consideration given to any voter, not to the community generally.

In the *Hastings case* (1 O'M. & H. 218), where the charge was of lavish expenditure in anticipation of an election, Mr. Justice Blackburn said: "There is no law yet which says that any lavish expenditure in a neighborhood, with a view of gaining influence in the neighborhood and influencing an election, is illegal at all. In order to constitute anything which would be a corrupt practice in respect of expenditure of that sort, it must be made with a view of influencing a particular vote. If such an expenditure is made at a place, with a tacit understanding of this kind, 'I will incur bills, and spend my money with you, if you will vote for me,' that not being the side on which you intended to vote; if it is intended to produce that effect upon the vote, it amounts to bribery." In the *Windsor case* (2 O'M. & H. 90), which was a charge of colorable charity, Mr. Baron Bramwell says: "It is certain that the coming election must have been present to his mind when he gave away these things. But there is no harm in it if a man has a legitimate motive for doing a thing, although in addition to that he has a motive which, if it stood alone, would be an illegitimate one. He is not to refrain from doing that which he might legitimately have done, on account of the existence of this motive, which by itself would have been an illegitimate motive. If the respondent had not been an intending candidate for the borough, and yet had done as he has done in respect to these gifts, there would have been nothing illegal in what he did; and the fact that he did intend to represent Windsor, and thought good would be done to him, and that he would gain popularity by this, does not make that corrupt which otherwise would not be corrupt at all."

In the *Boston case* (2 O'M. & H. 160), which was also a charge of charitable gifts for a corrupt purpose, it appeared that the respondent, who had formerly represented

the borough, had determined to distribute a large quantity of coals among the poor in the borough, and wrote a letter to a gentleman expressing that desire. The coal was distributed, but instead of the coals being distributed as the respondent Parry had intended, to the poor of the district, cards were printed without his knowledge, and bearing the signature of one Dyer (who acted subsequently at the election as the respondent's agent for the election expenses), with these words on them, "Please deliver —— cwt. of coals to A. D——, for Thomas Parry. B. B. Dyer;" and on the back of the cards were the words, "With Mr. Parry's compliments." Mr. Justice Grove, in giving judgment, says: "It has been over and over again held that an unfair and improper donation with the view, motive, and intention of securing a vote, is corrupt within the meaning of the Corrupt Practices Act, 1854. It might be a doubtful question (and it is one which was discussed in the *Windsor case*) whether, assuming two motives to exist —the one being pure, and the other with the intention to corrupt—you could exclude the corrupt intention and rely wholly upon the pure intention. I think that must be rather a question of degree. A man may wish to be charitable in a neighborhood, but at the same time he may have an eye to his own interests; and there must be in fact some limiting line, incapable of being defined in words, where the two things come to a nearly equal balance. We know, for instance, that persons looking forward to be candidates for Parliament are generally pretty liberal to the charities in the district, and such liberality, as far as I am aware, has never been held to vitiate the election; I suppose upon the grounds that such persons do not select voters, as contradistinguished from non-voters, as the objects of their charity; that the object itself is good, and that although the donors may in so bestowing their charity look to their personal interests and personal ambition, still a man is not to be injured in an object of personal ambition, merely because he does good which perhaps without that stimulus he might not

have been induced to do." The learned Judge acquitted the respondent of personal corruption, but held that the act of the agent, in distributing the coals in the way he did, made it an agency for securing votes for him, and was therefore corrupt within the meaning of the statute.

I refer particularly to this case, as it was relied on strongly by both the learned counsel in their very able addresses; and it appears to me to sustain the argument that so long as charitable donations are given generally, and not with a view to influence any individual voter, they will not vitiate an election. There must be such large and indiscriminate gifts as to leave no doubt on any one's mind that the effect had been to corrupt the public mind, or, in other words, to constitute general bribery. In the *Guildford case* (1 O'M. & H. 15) Mr. Justice Willes said: "It is unnecessary to go into any inquiry here as to general bribery. We have no evidence whatever of the prevalence of general bribery at the election. But do not be mistaken, and suppose that because these inquiries turn upon individual cases, and upon whether these cases are traced to the member or his agents, that general corruption quite apart from acts of the members or their agents would not have the effect of vitiating an election. It clearly would, because it would show that there was no pure or free choice in the matter, that what had occurred was a sham, and not a reality. This, however, is out of the question here. There may also be bribery so large in amount as in itself to furnish evidence, not indeed of general bribery, but of bribery coming from a fund with which it is impossible, as a matter of common sense, not to conclude that the member or at least an agent of his was acquainted. In that case the proper result would be the vitiation of the election, because the bribery was of such an extent as must have come to the knowledge of the member or his agent."

There was no such evidence in the present case. The case of the *South Huron election* (24 C. P. 488, *ante* p. 576) was referred to by Mr. McCarthy as showing that

the gifts to the churches mentioned in that case were evidence of corrupt practices on the part of the respondent, but the circumstances were entirely different. It was there proved that large sums of money were illegally spent, and there could be no doubt corruption had very generally prevailed, so much so that it was admitted the election was void. Moreover, in giving judgment, the learned Chief Justice says: "We have no information as to where these churches are, or anything as to the probable effect of the subscriptions thereto on the electors of the riding. We would naturally have looked for something enabling us more fully to understand the true position of the matter. For example, it might not have been unimportant to have ascertained if the respondent, who states that he has represented the riding since 1867, was in the habit of giving money to these churches on previous occasions, or, as we find in some of the English cases, that as a representative he was in the habit of subscribing liberally to charitable purposes at Christmas time." The remarks of the learned Chief Justice are completely met in the present case. The charity was to a charitable institution in his own town; the cemetery was attached to the same place; the Rifle Association belonged to his own county, and he had previously contributed to one of them; and, as respects his general conduct in reference to churches, etc., he says, in his examination by Mr. Robinson, "I have not given away more this year than in other years. I have given, including my own church, one thousand a year for the past ten years. Since 1st January, 1876, I have paid to my own church at least $2,500." That statement was uncontradicted, and as it was of such a specific nature that it could have been, I have no doubt that it was true. I therefore find that the corrupt practices here charged have not been proved.

Charge No. 37, that the respondent bribed one William Thomas Dingle by promises of office for his son. There was also a further charge—No 6 of the added charges—that the respondent promised him a contract if he would support him.

These two charges may be considered together; and if the evidence given by Dingle himself be accepted as true, they might be considered as proven; but he is contradicted in every particular. He said on his re-examination, referring to a conversation which he had with the respondent towards the end of June, "Mr. Glen said to me that I should have the job, and he would do everything he could for me, or my son, if I would support him." In his examination he says, in reply to a question by Mr. McCarthy as to whether he had had more than one interview or conversation with Mr. Glen respecting his son, "*No; not about my son; not about this.*" In reply to the following question by Mr. Robinson, "*Do you mean to say you had never asked Mr. Glen to endeavor to get an office for your son?*" he said, "*I never did.*" Mr. Garvin, his brother-in-law, says, referring to a conversation with Mr. Glen which had taken place on the train previous to this, "Mr. Dingle asked me the Saturday previous to interest myself with Mr. Glen to endeavor to get a situation for his eldest son, Frank, which I promised to do." Mr. Garvin had also written to Dingle on this very subject. This letter was produced, and as it was very much commented on, I will read it:

TORONTO, Ont., 19th June, 1878.

DEAR THOMAS,—I had a long interview with Mr. Glen the day I left Oshawa. He seems willing to do what he can, but he will do nothing which would invalidate his election, which he considers certain. He states that he has always used his influence in your favor in the matter of contracts, irrespective of politics, and will continue to do so. He says further that the Gibbs never forgive; and if you have offended them in any way, they will never forgive it, but will always use it to your disadvantage. I think there is no doubt of this; and I quite agree with him that they are ready to get rid of you if possible. As to Frank, Mr. Glen will get him an appointment either in a bank or in a Government situation, whichever you desire; but it must be understood that he does it from friendly motives and not on account of political influence. He reminded me, however, that you could not expect a youth of Frank's age—no matter how capable—to receive an appointment involving a large responsibility. This is quite plain; and he advised a bank appointment on account of the special training it would confer, which would be of advantage in any calling he might engage in in after life. If you will write me what you would prefer, I will write him or will see him if you consider it advisable; or it might be as well if you would talk over the matter with him personally, when you could see how your views agree in regard to it. I have nothing to advise. You know best

what you desire for Frank, but I see the difficulty of age which suggests itself at the outset. Let me hear from you by return, at Hamilton.

Yours truly, (Signed), JNO. GARVIN.

This was in Mr. Dingle's possession at the meeting in June, and consequently, although it may be and probably is true that he had not personally applied to Mr. Glen for a situation for his son, he had requested Mr. Garvin to do so, and knew that it had been done. Mr. Dingle states that Mr. Glen asked him if he had received a letter from Garvin, and he replied that he had. Mr. Glen denies that he ever asked him if he had received such a letter; in fact, in his original examination, before any other evidence had been given, he swears that to the best of his recollection no such conversation ever did take place. It is not asserted by Dingle that any but one conversation did. Then, as respects the interview with Garvin, Mr. Glen in his original examination says that, meeting Garvin on the train, "I asked him to use influence with Dingle and Pedlar (who are brothers-in-law of Garvin) to keep them quiet, for I did not expect them to vote for me." Garvin has himself given us a detailed account of what took place between himself and Mr. Glen, the result being that on his return to Hamilton he writes the letter already referred to. We must therefore, so far as Mr. Garvin is concerned, consider that what he did is contained in the letter, which in no way refers to the election at all. I therefore consider charge No. 37 is not proved.

Then, as regards No. 6 of the added charges, it must be borne in mind that the conversation in which this promise is said to have taken place was in June, towards the latter end of it. Mr. Glen denies that he ever agreed to give Dingle the contract at all. Gliddon, a witness, stated that in a conversation with Dingle at Oshawa, on the night of the 3rd of August, he said to Dingle, "Glen wants you to vote for him," to which Dingle replied, "No, he never asked me to vote for him; he knows which way I go; only he does not want me to do anything against

him." Another witness, James Gall, said, in reference to a conversation which he had with Dingle in August, that Dingle said, "If Glen had acted the gentleman with me, and done the work as he agreed to do, he could not have expected me but to vote against him; but I would not have done any more than that; he could not expect but that I would vote against him; give my silent vote against him." He added, "Now he was going to do all he could to defeat Mr. Glen." Dingle, on his previous examination, on being questioned as to his conversations with the above witnesses, had stated as respects Gliddon, "That he had never told Gliddon that Glen knew his politics, and never asked him to support him." As respects Gall, he said, "I do not know that I told him I would support Glen if I got the contract. I say most positively I never told Mr. Gall to my knowledge." We find also that at a picnic which took place on the 1st July, to which I have already referred, on a contest for a pitcher as a proof of public popularity, Dingle cast one thousand votes for Mr. Gibbs, as against Mr. Glen, which appears to me to be entirely inconsistent with his having received the promise of a contract on condition of his supporting Mr. Glen at the coming election. The contract was in reality given to another person about the end of August or beginning of September, shortly previous to the election. It is therefore plain that, so far as Dingle was concerned, the respondent acted in a manner directly contrary to what Dingle has sworn he promised to do —and did so at a time when, if he expected to secure his support by virtue of the offer of the contract, he took the most effectual means to arouse his active opposition, which he did. I am of opinion that this charge is not proved.

Charge No. 31, George H. Pedlar bribed by Mr. Glen by settlement of a claim for money. It appears that some years before the election Mr. Pedlar had had a transaction with Mr. Glen respecting some wringers, and Mr. Pedlar contended that Mr. Glen was indebted to him

for a deficiency of fifty-three wringers. Mr. Glen at that time denied all liability. This occasioned a coolness between them, and they had not spoken to each other for some time until the beginning of 1878. A person by the name of Hawthorne, who was employed both by the respondent and by Pedlar to collect accounts, as their agent respectively, was anxious to bring about a reconciliation between them, and this he effected in March last. In May, 1878, Hawthorne was employed by Pedlar to obtain payment of an account which he had against the respondent for copper, and did so, and obtained a note for the amount. On handing the note to Mr. Pedlar he said he thought that Mr. Glen was in good humor, and that it would be a good opportunity to get the other account settled. He stated he knew what the other account was; it was for the wringers. He asked Mr. Pedlar whether in case the account were settled he would support Mr. Glen at the election. Pedlar said: "You can promise what you like," and, according to his own evidence, reserved to himself the right to act as he might think fit. Mr. Hawthorne took the account to the respondent, who looked over it and gave his note for it. Hawthorne states positively that at the time he presented the account to Mr. Glen, and Mr. Glen gave the note, nothing whatever was said about the election. The respondent, in reference to this charge, says that nothing was ever said to him about the settlement of the account in relation to the election, and that the settlement was never hinted to him as referring to his election. That statement is corroborated by the evidence of Hawthorne. I therefore find that the charge is not proved. I may add that there was no evidence that Hawthorne was an agent of the respondent as respects the election.

On the morning of the last day of the trial Mr. McCarthy applied to add another charge of corrupt practices by an agent, by promise of office to one Wallace, to induce him to vote for, or refrain from voting against, the respondent. This application was supported by an affidavit

of the gentleman who had been engaged in preparing the evidence in support of the petition, that the evidence had come to his knowledge only that morning. The charge was allowed to be added.

In the *Cheltenham case* (1 O'M. & H. 64), Martin, B., in reference to bribing by office, says: "Where the evidence as to bribery consists merely of offers or proposals to bribe, the evidence required should be stronger than that with respect to bribery itself; or where the alleged bribing is an offer of employment it ought to be made out beyond all doubt, because when two people are talking of a thing which is not carried out, it may be that they honestly give their evidence, but one person understands what is said by another differently from what he intends it." In the *Coventry case* (*ibid.* 107) Mr. Justice Willes said, with regard to mere offers to bribe: "Although these cases have been classed below those of bribery by both the learned counsel, it cannot be supposed that any offer to bribe is not as bad as the actual payment of money. It is a legal offence, although these cases have been spoken of as being an inferior class, by reason of the difficulty of proof, from the possibility of people being mistaken in their accounts of conversations in which offers were made, whereas there can be no mistake as to the actual payment of money." Again, in the *Mallow case* (2 O'M. & H. 72), Mr. Justice Morris said: "I have desired to apply two rules to work out my judgment by. They are shortly these: First, that I should be sure, very sure, before I come to a decision adverse to any party where his character or credit is involved; second, that offers or conversations unaccompanied by any acts should be much more strongly proved in evidence than where some clear definite act has followed the alleged offer or conversation."

The above observations apply with much force to the present case. It appeared the witness Wallace and the alleged agent, Higgins, were old friends; that on 17th June, Wallace had made application to be appointed

police magistrate of the town of Whitby, no such office being then in existence; and the purport of his evidence is that Higgins promised him Mr. Glen's support, and asked him to refrain from voting for Mr. Gibbs himself and get others to refrain from voting for him. This is positively denied by Higgins, who said he was willing to support Wallace's application as an old friend; that he did speak to Mr. Glen, but that he never asked Wallace to abstain from voting. Mr. Glen says that Higgins did speak to him in favor of Wallace; but he thought it was a joke, and that he told Higgins he thought Wallace a very improper person for the office. Nothing was ever done; no application was ever made by the Council for the appointment of a police magistrate; and nothing more was said about it. This was some considerable time before the election, and the witness not only voted for Mr. Gibbs but acted as one of his committee. I find this charge is not proved.

I find that no corrupt practices have been proved to have been committed by or with the knowledge or consent of the said Francis Wayland Glen.

Petition dismissed with costs.

The Supreme Court of Canada, on the appeal of the petitioner, affirmed the judgment of Mr. Justice Galt. (3 Sup. Ct. R. 641.)

(14 *Commons Journal*, 1879, p. 14.)

EAST HASTINGS.

BEFORE MR. JUSTICE ARMOUR.

BELLEVILLE, *27th January, 1879.*

WILLIAM ROBERT AYLESWORTH, *Petitioner*, v. JOHN WHITE, *Respondent.*

Ballots—Marks by Deputy Returning Officers—Void election.

Certain deputy returning officers, before giving out ballot papers to the voters at the election in question, placed numbers on the ballots corresponding with the numbers attached to the names of such voters on the voters' lists.

Held, 1. That the deputy returning officers had acted contrary to law in numbering the ballots, and that the ballots so numbered should be rejected as tending to the identification of the voters.

2. That such conduct of the deputy returning officers having had the effect of changing the result of the election, a new election was ordered.

The petition contained the usual charges of corrupt practices, and claimed the seat for the petitioner on a scrutiny of the ballots.

Mr. Bethune, Q.C., *and Mr. Holden*, for petitioner.

Mr. G. D. Dickson, and Mr. Fralick, for respondent.

It appeared that the petitioner and respondent were candidates at the election held on the 10th and 17th September, 1878, the vote being: For petitioner, 1,205; for respondent, 1,188. On a recount before the Junior Judge of the County of Hastings, it appeared that the ballots for five polling divisions, Nos. 1 and 5 Hungerford, Nos. 3 and 5 Thurlow, and No. 2 Tyendinaga, had numbers on the back. The Junior Judge rejected the ballots in two of the divisions, No. 5 Thurlow and No. 2 Tyendinaga, and allowed the ballots in the three other divisions, thereby giving the seat to the respondent by a majority of twenty votes. The evidence as to the placing of numbers on the backs of the ballots was as follows:

Benjamin Henry, deputy returning officer, No. 1, Hungerford: I put the same number on the ballots and counterfoil; I held the counterfoil in my hand until the

voter came back with his ballot, and then I saw that the same number and my initials were on the ballot that the voter brought back to me, and then I tore up the counterfoil and put the ballot in the box. The number was taken at random without reference to the voters' list, and was a private mark of my own. I did not in any case put the same number on the ballot as was the number of that particular voter on the voters' list. I could not identify a voter by the numbers on the ballots, nor could any one else.

In this division it was found that 35 of White's and 2 of Aylesworth's ballots corresponded with the numbers on the voters' list.

Michael Lesarge, deputy returning officer, No. 5, Hungerford: I commenced to number the ballots from No. 1 of my own accord, when I was directed by the scrutineer of Mr. White, a namesake of his, to number them from the voters' list; then I commenced doing so. I think I had numbered eight or ten when I was told by Mr. White that I had to number the ballots according to the voters' list. I am not certain whether the numbers I put on the ballots were the numbers from the voters' list kept by me, or from the voters' list kept by the clerk. I followed the numbering on one of the books, whichever it was; some ballots are not numbered; eighteen is the lowest number which is on the ballots. I put the numbers on the counterfoils at first; then I stopped and put the numbers on the ballots.

In this division it was found that in the voters' list kept by the deputy returning officer, the names of the voters were numbered up to 92; that on the ballots 18 was the lowest, and 92 the highest number; and that 10 of Aylesworth's and 2 of White's ballots were not numbered.

Edward Thresher, deputy returning officer, No. 3, Thurlow: I do not know who put the figures on the backs of the ballots now shown me. They might have been put on when the ballots were counted. There were

no numbers on the ballots when they were put into the box, and there were no numbers on the ballots when they were taken out and counted. Mr. Taylor and Mr. Brentnall were scrutineers.

Eleazer Brentnall: I assisted to count the ballots as Mr. Thresher took them out of the box. He said who they were for, and I put on the numbers. I numbered them from one forward, just as they came out of the box, to see if they tallied right. These numbers were not on them when they were taken out of the ballot box.

Albert Loucks, deputy returning officer, No. 5, Thurlow: The numbers on the ballots are the same as those which appear on the voters' list.

Edward Hollingsworth, deputy returning officer, No. 2, Tyendinaga: The numbers on the ballots are the same as those on the voters' list. The number which was opposite a voter's name on the list was the number which I always put on the ballot, except in one case where I made a mistake, and put on 8 instead of 2.

At the opening of the case, counsel for the petitioner submitted that the recount by the County Judge was the only recount that could be had, and that his recount was final, and not open to revision by any other Court.

Mr. Justice ARMOUR held that the recount by the County Judge was not final, and that this Court had power to recount upon a petition like the present.

Counsel for the petitioner then submitted that all the ballots ought to be allowed, and that the proper way of determining the question as to their validity was upon the ballots themselves, and that parol evidence could not be received as to the nature of a mark on the ballots, or to show with what intent the deputy returning officer put marks upon the ballots.

Mr. Justice ARMOUR held that such evidence could be admitted.

At the close of the evidence the ballots were examined and it appeared that the following had numbers upon

them, as explained by the evidence given above: No. 1, Hungerford, Aylesworth, 2, White, 35; No. 5, Hungerford, Aylesworth, 56, White, 24; No. 3, Thurlow, Aylesworth, 55, White, 50; No. 5, Thurlow, Aylesworth, 88, White, 49; No. 2, Tyendinaga; Aylesworth, 77, White, 79.

Mr. Bethune, for the petitioner, thereupon admitted that if the ballots cast at No. 5, Thurlow, and No. 2, Tyendinaga, were rightly rejected, then, unless all the ballots cast at No. 1, Hungerford, were rejected, the petitioner could not obtain a majority; that if all the ballots cast at No. 1, Hungerford, were not rejected, the petitioner would be in a minority, and he submitted that in that event it was clear that there must be a new election; that the act which caused the ballots cast at No. 5, Thurlow, and No. 2, Tyendinaga, to be rejected, was the act of the deputy returning officer; and that the constituency must not be disfranchised by the act of that officer.

[ARMOUR, J.—If what was done at No. 5, Thurlow, and No. 2, Tyendinaga, affected the result of the election by causing the respondent to be returned when otherwise the petitioner would have been returned, there must be a new election].

Mr. Dickson, for the respondent, admitted that such a result seemed consistent with justice and common sense. He cited *Woodward* v. *Sarsons* (L. R. 10 C. P. 753).

ARMOUR, J.—I think the ballots cast at No. 5, Thurlow, and No. 2, Tyendinaga, were rightly rejected. The statute, 37 Vic., c. 9, s. 55 (Can.), as amended by the statute, 41 Vic., c. 6, s. 10 (Can.), provides that in counting the votes the deputy returning officer "shall reject all "ballot papers which have not been supplied by the "deputy returning officer, all those by which votes have "been given for more candidates than are to be elected, "and all those upon which there is any writing or mark "by which the voter could be identified." The provisions are imperative. The ballots cast at these two polling subdivision had marks upon them by which the voter could

be identified. By comparing the numbers upon the ballots with the numbers on the voters' lists, it could be ascertained which way each voter had voted. *Woodward* v. *Sarsons* is precisely in point, and must govern this case It is there said that the ballot paper must not be marked so as to show that the voter intended to vote for more candidates than he was entitled to vote for, nor so as to leave it uncertain whether he intended to vote at all, or for which candidate he intended to vote, nor so as to make it possible by seeing the paper itself, or by reference to other available facts, to identify the way in which he has voted.

I think I cannot reject all the ballots cast at No. 1, Hungerford, and perhaps not any of them. All that I have any doubt about are those having upon them numbers corresponding with numbers set opposite to the names of voters on the voters' list; but the rejection of these would not put the petitioner in a majority, and it becomes therefore unnecessary to consider whether they ought to be rejected. The rest of the ballots cast at this polling subdivision were proved not to have had any writing or marks upon them by which the voter could be identified. They were numbered, and improperly numbered, by the deputy returning officer; but his evidence, which is uncontradicted, shows that the voters could not be identified by the numbers or by reference to other available facts.

There must therefore be a new election, and without costs. The petitioner, Mr. Aylesworth, would have had a majority of the votes of the electors, had it not been for the irregularities of the deputy returning officers, by which, and the recount before the County Judge, he has been put in a minority. The effect of these irregularities is not to seat the minority candidate, but to avoid the election. The minority candidate was returned by reason of the deputy returning officers' irregular mode of conducting the poll, by which the ballots of a certain number of voters were as effectually destroyed as if they had been put in the stove. (13 *Commons Journal*, 1879, p. 4.)

EAST ELGIN.

BEFORE MR. VICE-CHANCELLOR BLAKE.

ST. THOMAS, *27th–28th January, and 7th February, 1879.*

ARCHIBALD BLUE, *Petitioner*, v. THOMAS ARKELL, *Respondent.*

Excessive treating by an agent—"Common custom of the country"—Corrupt practice—Costs.

One D., who had been a candidate for various offices for twenty years prior to the election in question, and had freely employed treating as an element in his canvassing, became an agent of the respondent, and treated extensively, as was his common practice, during the election. The respondent was aware of D.'s practices, and once, in the early part of the canvass, cautioned D. as to his treating, but never repudiated him as his agent.

Held, on the evidence, that as D. did no more in the way of treating during the election than he had done on former occasions, and had employed treating as he ordinarily did as his argument, and had not used it as a means of corruptly influencing the electors, he was not guilty of a corrupt practice.

Semble, the treating proved in this case, if practised by one not theretofore given to such practice, would have been sufficient to have avoided the election.

Observations on the law as it now stands, as holding out inducements to candidates to employ men who are habitual drinkers to canvass by systematic treating, and thus cause electioneering to depend upon popularity aroused by treating, rather than the merits of the candidates, or the measures they advocate.

The petition was dismissed without costs, following the *Carrickfergus case* (21 L. T. N. S. 356; 1 O'M. & H. 264).

The petition contained the usual charges of corrupt practices. Prior to the trial, preliminary objections to certain allegations of the petition were disposed of by Mr. Vice-Chancellor Proudfoot (4 App. R. 412).

Mr. Colin Macdougall and Mr. Coyne, for petitioner.

Mr. D'Alton McCarthy, Q.C., *and Mr. Ermatinger*, for respondent.

BLAKE, V. C.—All the charges have been disposed of in this case except those connected with Samuel Day, as to which the following is the material testimony:

The respondent in his evidence says of him: "Mr. Day lives near town. He was nominated, and retired in my

favor. He asked the delegates there to support me. Mr. Day went with me. Mr. Day went with me through the Air Line and Canada Southern shops. We were canvassing. I suppose he was doing what he could to promote my election. He attended a meeting at Dexter and Copenhagen; he attended the meeting at Aylmer. After the nomination he went to assist me at the Copenhagen meeting. No doubt his assistance was valuable. I knew he was actively engaged for me. I told Mr. Day in the early part of the canvass he must be careful not to treat. Mr. Day is in independent circumstances. He said he had no money on nomination day, and I loaned him ten dollars. He had come away without funds. He has borrowed money from me a hundred times, and I from him. From beginning to end I never directly or indirectly treated, or used any undue influence, through the six weeks the election lasted."

Samuel Day: "I treat frequently; I have done so ever since I became a man. People asked me to have a glass of ale and I returned it. I am very fond of company. I always ask other people when about me to drink; this is my habit. I keep no liquor in my house. I never drank alone in my life. I never offered a man anything with the intention of influencing his vote. I treated Wooley. I don't know the occasion to which he referred. Maybe I asked him into Penwarden's. I never held out an inducement. He told me he was not going to vote. I said, 'That is right.' I never said anything about influencing his vote. Mr. Arkell cautioned me about the treating. I said it was none of his business, and that I would do as I had always done. I knew the law was strict, and that I dare not treat with the intention of influencing. I might have treated Mr. Lightfoot and Mr. Mordinger. I do not think you could influence either of these men. Sinclair is much about the taverns; he drinks a good deal and does not treat. He takes an active part in politics. He introduced the subject. I had not the election on my mind when I took the electors in to treat.

I should have liked to have seen Mr. Arkell elected. I mentioned it was necessary to have a change in the government. I do more work outside than on the platform."

[The evidence of the other witnesses was confirmatory of Day's usual practice of indiscriminate treating.]

I have perused all the cases to which I have been referred, and any others that I have been able to find on the subject of treating, and from them quote the following passages in the English cases bearing on the construction of the section in question, as to treating. Mr. Justice Willes in the *Tamworth case* (1 O'M. & H. 82-3) says: "Treating, to be corrupt, must be treating under circumstances and in a manner that the person who treated used meat or drink with a corrupt mind, that is, with a view to induce people, by the pampering of their appetites, to vote or to abstain from voting, and in so doing to act otherwise than they would have done without the inducement of meat or drink." Mr. Justice Blackburn, in the *Wallingford case* (1 O'M. & H. 58), says: "I think that what the Legislature means by the word 'corruptly,' for the purpose of influencing a vote, is this: that whenever a candidate is, either by himself or by his agent, in any way accessory to providing meat, drink, or entertainment for the purpose of being elected, with an intention to produce an effect upon the election, that amounts to corrupt treating. Whenever also the intention is by such means to gain popularity and thereby to effect the election, or if it be that persons are afraid that if they do not provide entertainment and drink to secure the strong interest of the publicans, and of the persons who like drink whenever they can get it for nothing, they will become unpopular, and they therefore provide it in order to affect the election—when there is an intention in the mind, either of the candidate or his agent, to produce that effect, then I think that is corrupt treating."

Again, in the *Coventry case* (1 O'M. & H. 106) Mr. Justice Willes says: "When eating and drinking take the

form of enticing people for the purpose of inducing them to change their minds, and to vote for the party to which they do not belong, then it becomes corrupt, and is forbidden by the statute. Until that arrives, the mere fact of eating and drinking, even with the connection which the supper had with politics, is not sufficient to make out corrupt treating." Again, in the *Bodmin case* (1 O'M. & H. 125): "The Judge must satisfy his mind whether that which was done was really done in so unusual and so suspicious a way that he ought to impute to the person who has done it a criminal intention in doing it, or whether the circumstances are such that it may fairly be imputed to the man's generosity, or his profusion, or his desire to express his good-will to those who honestly help his cause, without resorting to the illegal means of attracting voters by means of an appeal to their appetites." Mr. Baron Martin says (*Bradford case*, 1 O'M. & H. 37): "What is the exact meaning of the word 'corruptly?' I am satisfied that it means a thing done with an evil mind and intention, and unless there be an evil mind or an evil intention accompanying the act, it is not corruptly done. 'Corruptly' means an act done by a man knowing that he is doing what is wrong, and doing it with an evil object." In the *Lichfield case* (1 O'M. & H. 25), Mr. Justice Willes says: "It may be doubted whether treating in the sense of ingratiation by mere hospitality, even to the extent of profusion, was struck at by the common law. It is, however, certain that it is now forbidden under penalties by the 17th and 18th Vic., c. 102; whenever it is resorted to for the purpose of pampering people's appetites, and thereby inducing electors either to vote or to abstain from voting otherwise than they would have done if their palates had not been tickled by eating and drinking supplied by the candidates."

I should have been glad if I could have found that it had been held in this country that the ordinary treating, as here practised, was a means of ingratiation, of enticing or inducing, in a way repugnant to the spirit of our

election laws, and which, if indulged in during the canvass by either the candidate or his agent, would be a reason for setting aside the election. It is true that the cases to which I shall refer were disposed of under an enactment differing from that on which this case depends, but the law for the guidance of electors and candidates has been there expounded, and principles have been distinctly laid down by which I am bound.

In the *Glengarry case* (*ante* p. 8, s. c., *Brough on Elections*, p. 22), Hagarty, C. J., uses the following language: "I feel bound to say that the evidence given by the respondent seemed given with great candor, and favorably impressed me as to its truth, and I feel wholly unable to draw from it any honest belief that he provided this entertainment, consisting apparently of a glass of liquor all around, with any idea that he was thereby seeking to influence the election or promote his election in any of the senses referred to in the cases. He was unaware of the state of the law on this subject, as he says. He is not to be excused on the ground of his ignorance; but the fact (his ignorance) is not wholly unimportant as bearing on the common custom of the country—too common as it unfortunately is—of making all friendly meetings the occasion or the excuse of a drink or treat. The strong impression on my mind, and I think it would be the impression of any honest jury, is that the treats in question were just given in the common course of things as following a common custom. In the appropriate language already cited the Judge must satisfy himself whether the thing which was done was really done in so unusual and suspicious a way that he ought to impute to the person a criminal intention in doing it."

In the *Kingston case* (*ante* p. 623, s. c. 11 Can. L. J. 23), Richards, C.J., says: "The general practice which prevails here, amongst classes of persons many of whom are voters, of drinking in a friendly way when they meet, would require strong evidence of a very profuse expenditure of money in drinking, to induce a Judge to say that it

was corruptly done so as to make it bribery, or come within the meaning of 'treating' as a corrupt practice at the common law." The learned Chief Justice adds: "I must confess to have been very much embarrassed in coming to a conclusion in this matter satisfactory to myself. If it were not that I felt compelled to look upon this branch of the case in the nature of a penal proceeding, requiring that the petitioner should prove his allegations affirmatively by satisfactory evidence, and that he might have given further evidence to have repelled some of the suggestions in respondent's favor, if such suggestions were not reasonable ones, I should be bound to decide against the respondent; but looking at the whole case, I do not think I ought to do so. If it is found from experience that the provisions contained in the present laws now in force in the Dominion and in Ontario do not effectually put an end to corrupt practices at elections, and that in order to do so it will be necessary to bring candidates within the highly penal provisions of declaring them, when they violate the law, incapable of being elected or holding office for several years, Election Judges will probably find themselves compelled to take the same broad view of the evidence to sustain these highly penal charges that experience compelled committees of the House of Commons to take as to the evidence necessary to set aside an election."

In the *North Middlesex case* (*ante* p. 376, s. c. 12 Can. L. J. 15), the Chancellor says: "Then there is the custom of the country—not to be commended, but still to be taken into account—to take drink in the bar-rooms of taverns, and to do so in the shape of treating some or all of those assembled with them in the room—the 'crowd' as it is often called. . . . The respondent is a farmer, and has for the last sixteen years followed the business of a drover. He says that it is the practice of drovers to go to taverns as the best place for meeting with farmers and hearing of cattle; that such has been his practice, and that he has always been in the habit of treating at

taverns in the course of his business, and this is confirmed by the evidence of other witnesses. He states that when he became a candidate he canvassed personally through the riding, and went to the taverns as good places to meet with the electors; that on these occasions he sometimes treated; sometimes friends who were with him treated; and the treating was sometimes by others who were not friends, and the treating was general to all who might happen to be present. As to its extent, he says it was much less than was his habit in the course of his business—not more, he says, than one-fifth as much. He denies emphatically that he treated with any view of influencing voters; that he made no distinction as to whom he treated; that he had not taken legal advice; that he meant to obey the law; and that he thought that in what he did he committed no infraction of the law." The learned Chancellor continues: "I think that the respondent, in doing what he did, was treading upon dangerous ground; but before holding that his seat is thereby avoided and himself disqualified, I must be satisfied that what he did was done with a corrupt intent, and in judging of this the general habit of treating in the country, and the respondent's own practice, may properly be considered. It seems all to come to this: treating is not *per se* a corrupt act. The intent of the act must be judged by all the circumstances by which it is attended. If in this case the evidence led me to the conclusion that the respondent did what he did in order to make for himself a reputation for good fellowship and hospitality, and thereby to influence electors to vote for him, I should incline to think it a species of bribery which would avoid the election at common law; but upon a careful consideration of the evidence it does not lead me to that conclusion. There was nothing wrong in the eye of the law in the respondent making his canvass by meeting the electors at taverns, and he does not seem to have abused the occasions of so meeting them by seeking to obtain their votes by pampering their appetites for drink, or by other undue means."

By section 98 of the Dominion Elections Act, 1874, it is enacted that "The offences of bribery, treating, or undue influence, or any of such offences, as defined by this or any other Act of the Parliament of Canada, shall be corrupt practices within the meaning of the provisions of this Act;" and by section 94 of this statute the offence of treating is thus defined: "Every candidate who corruptly, by himself or by or with any person, or by any other ways or means on his behalf, at any time either before or during any election, directly or indirectly gives or provides, or causes to be given or provided, or is accessory to the giving or providing, or pays wholly or in part any expenses incurred for any meat, drink, refreshment, or provision to or for any person, in order to be elected, or for being elected, or for the purpose of corruptly influencing such person or any other person to give or refrain from giving his vote at such election, shall be deemed guilty of the offence of treating." So that to make this offence a corrupt practice there must be the corrupt giving for the purpose of corruptly influencing. Treating is not in itself illegal, and in considering whether it is a corrupt practice or not, it is under the authorities proper to look at the habits of the man accused of the offence, and endeavor to ascertain his intention in the treating complained of. It is not to be inferred that the act is corrupt simply because an election is going on.

There is no doubt that with the agent Day treating was an ordinary act of everyday life. Whenever and wherever the occasion offered it was indulged in. He is described as a man who did not do much on the platform, but who was a powerful man outside. He appears to have thought that there was not much in himself to commend him to those he met, and at once he invariably turned to his potent friend the bar, and, by this more than questionable mode of procedure, sought to stimulate or form a friendship between himself and those he met. To this low conception of his own powers he added the view that those he met in his county were guided by a

standard no higher than his own, and he appears for over twenty years past to have successfully carried on this vile and degrading system of universal treating, which has been found to be so debauching in its effect throughout our Province. This man, who has been a candidate for various offices for the past twenty years, and has freely employed treating as an element in his canvass, becomes an agent of a candidate who no doubt uses him as a man whose influence, created by the use of liquor, will be sustained by the same means, the benefit of which will accrue to him in the election contest. This treating, if found in one not theretofore given to this vice, would have been sufficient to have avoided the election, but no doubt the respondent and his agent were informed of the decisions which sanctioned, under certain circumstances, a large amount of treating, and they acted on these cases, and I think are now entitled to shelter behind them. Although Arkell was apparently afraid of the consequences to himself that might arise from Day's treating, he never repudiated him as his agent. On one occasion the candidate and another, a friend sent by him, remonstrated with Day as to the probable consequences of his treating; but I cannot say that Day did more in the way of treating during than before the election, nor that he used this means of influence corruptly within the authorities. He employed this, as he ordinarily did, as his argument, and he did not use it more or differently one time from another. I think he went as far as he could go without bringing himself within the clauses of the Act which avoid elections for corrupt acts. I cannot say either that there has been "any wilful offence" in the giving, or causing to be given, to any voter on the nomination day or day of polling, on account of such voter having voted or being about to vote, any meat, drink, or refreshment.

What was done by Day at the nomination cannot be said to have been done on account of a voter having voted. The act of treating on that day in order to affect the election must, under the latter portion of section 94,

be coupled in some manner with "such voter having voted or being about to vote." In no case has it been shown clearly to have been so. In the case of Peter Wooley, Day, to my mind, brought himself very nearly within the penal clauses of the Act. The promise of assistance made to Wooley was too vague for me to act upon, but the question of his voting was then brought up, and liquor was introduced, and Day then obtained from him a promise in connection with his voting. If the matter was *res integra*, I should have found this election avoided by the acts of Day. I cannot, however, do so in view of the decisions in this country and in England. I am bound to follow these authorities, and must leave it to those who think themselves aggrieved by my finding to proceed by appeal and have the matter set aside.

I feel that as the law stands at present a great inducement is held out to would-be candidates to look out in each constituency for men who are habitual drinkers, to win them to their side, and then to send them out to carry on the canvass by systematic treating, and thus to cause the electioneering of the country to depend to a great extent on the popularity aroused by these means rather than on the actual merits of the candidates, or the measures they advocate. The door is thus very widely opened to the introduction of drink as a means of quietly, yet surely, affecting the election. This would be prevented if I could have held that the paying for liquor supplied to a voter by a canvasser when engaged in canvassing his vote was a means of ingratiation or enticement, or of making himself popular, struck at by the Act, and by it made a corrupt practice.

Too much stress was laid in argument on the $10 given to Day by Arkell. There was nothing unreasonable in this. It was more reasonable for Day to borrow this sum from his friend Arkell than that he should borrow from any person else when away from home, and much more reasonable to borrow $10 than to run in debt at the various taverns and other places where he might be

for the three or four days he was absent from St. Thomas canvassing for the respondent.

I disposed of all the other charges on the trial of the case, and while not satisfied with the conduct of Day, I cannot, after a careful reperusal of the evidence, conclude that I would be justified in setting aside the election on account of what he had done.

As to the costs of these proceedings, I think I may well follow the rule laid down in these words in the *Carrickfergus case* (21 L. T. N. S. 356): "But when drink is once given, those who give or sanction it cannot know or form an opinion of the consequences to which it may lead. I think it should be discouraged, and that not only candidates but their over-zealous friends and partisans should be apprised of the risks they run, and of the consequences to which they expose the candidate, by such a practice, and that it might be attended with positive loss to him. Upon these grounds I think I should, in this case, do what I clearly have authority to do under the Act of Parliament, namely, refuse to give the respondent the costs of these proceedings." (s. c. 1 O'M. & H. 264).

I shall report accordingly to the Speaker.

(13 *Commons Journal*, 1879, p. 18.)

PRESCOTT.

BEFORE MR. JUSTICE ARMOUR.

L'ORIGNAL, *7th January and 19th February, 1879.*

ALBERT HAGAR, *Petitioner*, v. FELIX ROUTHIER, *Respondent.*

Voters entered on Voters' List in wrong capacity—Right to vote—Refusal to swear.

The respondent was elected by four votes. At the election the names of twelve persons who were entered on the assessment roll as "free-holders" appeared on the voters' lists, owing to a printer's mistake, as "farmers' sons." Their votes were challenged at the poll, and they were required by the petitioner's scrutineers to take the farmers' sons' oath, which they refused. Subsequently they offered again to vote and to take the owners' oath, and the deputy returning officer, who was also clerk of the municipality, knowing them, gave them ballot papers and allowed them to vote.

Held, 1. That having been rightly entered on the assessment roll, the mistake as to their qualification on the voters' list did not disfranchise them.

2. That their refusal to take the farmers' sons' oath was not a refusal to take the oath required by law. A refusal to swear is where a voter refuses to take the oath appropriate to his proper description.

3. That having a right to vote, although they voted in a wrong capacity, their votes could not be struck off.

Semble, That the provisions of the law as to how voters are to be entered on the voters' list in respect to their property, and as to the manner in which they are to vote, are directory.

The petition contained the usual charges of corrupt practices, and asked to have the election set aside on the ground that persons had been allowed to vote without the qualifications prescribed by law.

Mr. F. Osler for petitioner.

Mr. Peter O'Brien and Mr. Curran for respondent.

On the opening of the case the charges of corrupt practices were abandoned, and the election was attacked on the grounds set out in the judgment.

ARMOUR, J.—I do not know that there is any necessity for my retaining the case. I have listened attentively to the arguments on both sides. The subject matter of

dispute in this election case having been stated by one of the counsel on the previous occasion, I have since that time striven to make myself acquainted with the law upon the subject; and I therefore think it is just as well that I should dispose of the case now.

The facts are extremely simple. Some twelve persons were duly entered on the last revised assessment roll as assessed freeholders in respect of real property held by them, of sufficient value to entitle them to vote. From that assessment roll was taken, by the clerk of the township, a list of the voters who would be entitled according to it. In making out the copy for the purpose of having it printed, he set down correctly the names of these persons mentioned in the particulars, and described them therein as "owners," and set forth the property in respect of which they were assessed. The printer, it appears, made a mistake, entering opposite the name of each of these persons the word "do," which, referring to what went before, indicated that they should be designated as "farmers' sons." That printed copy was sent to the officials to whom by law the clerk of the municipality was obliged to send them; was the copy duly certified according to law; and was the copy deposited in the office of the clerk of the peace, from which copies were taken for the purposes of the voting of the various polling subdivisions.

At this election, at the polling subdivision number one, in the township of Alfred, the township clerk, the person who made out the voters' list for that township, was the deputy returning officer. These several persons came to that polling place. I do not think it is important whether they were each individually challenged, or were jointly challenged, and whether they were permitted to vote, or whether they were refused their votes, and the ground of challenge or refusal inserted. They came to vote, and they found themselves entered on the list as "farmers' sons." They were improperly entered. The only objection taken was that, as they were entered on

the list as "farmers' sons," they were not entitled to vote in any other capacity; and they must take the oath appropriate to a farmer's son, as if they were farmers' sons, as entered on the voters' list. They refused to take that oath; no other oath was required of them; and subsequently, having become excited no doubt by the dread of losing their franchise, they came back and insisted that their votes should be taken. The deputy returning officer knew them; knew that they were the persons named on the voters' list, and knew the mistake by reason of which they were sought to be disfranchised. They were permitted to vote. The question then comes to this: Had these persons a right to vote, entered as they were on the voters' list as farmers' sons?

My conclusion would be, that inasmuch as the majority was only four, and they were twelve, the election must have been affected by their voting. I do not think it is important to ascertain how they voted. Their voting must necessarily have affected the election; and if they had no right to vote, I think I ought to set the election aside. I think they were entitled to vote, and ought to have been allowed to vote. They did vote, being given ballots by the deputy returning officer: and I am called upon to say whether a mistake, such as was made on this list, ought to have disfranchised them: because, if they are to be disfranchised by reason of that, they had no right to vote at all, and the election ought to be set aside. I do not think the law is so absurd as to say that a man shall be disfranchised of his vote because of a mere mistake like this—because of the way in which he is set down on the voters' list. Unless the law contained a statement, that a person being set down in his wrong capacity, although fully identified, should not be entitled to vote, I think that such person should not be disfranchised.

I cannot but think that the provisions of the law, with regard to the manner in which the persons shall be entered on the voters' list, so far as the property is

concerned, and the manner in which they vote, are to be looked upon as directory. It would be a hardship indeed if a person, after these lists had been made out—if he had been on a sufficient time to entitle him to vote, and had paid his taxes—should find himself disfranchised by a mere mistake on the voters' list, caused either by accident, clerical error, or an error of the printer—an error which it might be said that the clerk of the township ought to have corrected. It would be a hard thing indeed to say that the law was so strict, that it disfranchised the person so situated, and compelled him to lose his vote. It is true that the statute requires these voters' lists to be published in a certain way, in order that the voters may see that they are properly entered upon these lists; but these men, some of them illiterate, all that they could reasonably ask to know would be whether they were on the voters' list. They find their names on the voters' list, and finding that, they would be satisfied. I think that the fact of the description "farmers' sons" being added to the names of these persons could not deprive them of their franchise. In a scrutiny, would their votes have been struck off? I think they would not. It does not matter how they voted, if they were found on a scrutiny to have a right to vote. Although they may have voted in a wrong capacity, or although they may have been down on the assessment roll by a wrong description, their votes would not have been struck off. I do not think I could strike these votes off on a scrutiny, had it been capable of being performed, when they voted in that way. I do not think I ought to avoid the election because these persons, who had a right to vote, did vote. I think the deputy returning officer would have done wisely to have given them ballots, marking on the poll book that the voters were objected to.

It is contended further on the part of the petitioner that after their having refused to swear, they were not, under the terms of the Act, entitled to come back and vote.

I do not take it that they have refused to take the oath which was the only oath that they could take. They refused to take the oath appropriate to the misdescription on the voters' list; they refused to take that oath, and I do not consider that a refusal to swear. A refusal to swear is where a person comes, being properly named in respect of real property upon the roll, under a proper description, and refuses to take such oath as is properly appropriate to his description. These persons did not refuse to take the oath, the only oath they could take; they refused to take the oath of farmers' sons, because they could not take it. I do not think that is a refusal to swear. I think that when they came back and voted they had a right to vote, and I do not think now that their votes can be struck off.

I think, therefore, the petition ought to be dismissed, and dismissed with costs.

(13 *Commons Journal*, 1879, p. 45.)

NORTH ONTARIO.

BEFORE MR. JUSTICE ARMOUR.

WHITBY, *30th, 31st January, 1st and 26th February, 1879.*

WILLIAM HENRY GIBBS, *Petitioner*, v. GEORGE WHELER, *Respondent.*

Bribery—Treating—Undue influence—Law of agency—Hiring orators and canvassers—Bribery of influence.

The respondent canvassed a voter, who at the trial swore that after he had agreed to vote for him, the respondent promised to give the voter some work; the respondent denied the promise.

Held, although the voter appeared to be a truthful witness, and was not shaken on cross-examination, that the promise of employment was not made out beyond all reasonable doubt.

The law of election agency is not capable of precise definition, but is a shifting elastic law, capable of being moulded from time to time to meet the inventions of those who in election matters seek to get rid of the consequences of their acts.

A room was procured at which private meetings were held of the friends of the respondent to promote his election—some of which meetings he attended. One W. attended these meetings, and was appointed to procure the vote of a certain voter who was absent from the riding. W. hired a vehicle to convey the voter to the poll.

Held, That W. was an agent of the respondent, and that his hiring such vehicle was a corrupt practice.

The respondent owed one M. a debt, which had been due for some time. He was sued for it about the time of the election, and was informed that his opponents were using the non-payment of it against him in the election. The respondent stated he would not pay it until after the election, as it might affect his election.

Held, That the promise to pay the debt was not made to procure votes, but to silence the hostile criticism, and was not therefore bribery.

Certain voters met at a tavern on polling day, and one B. said he did not know how to mark his ballot. One of the voters, after showing B. how to mark his ballot, according to the candidate he desired to vote for, treated.

Held, That the treating was not a violation of s. 94 of the Dominion Elections Act, 1874, nor a corrupt practice under s. 98 of the Act.

One M. canvassed a voter on polling day, and urged him to vote for the respondent, and, while canvassing, treated the voter four times; the voter then went and voted.

Held, That the treating was for the purpose of corruptly influencing the voter to vote or refrain from voting at the election.

A scrutineer for the respondent had some whiskey with him on polling day, and treated the deputy returning officer, poll clerk, and another in the polling station.

Held, not a corrupt practice.

Certain supporters of the respondent met in a room over a tavern to promote the election of the respondent. Their meetings were presided

over by an agent of the respondent, and the respondent attended at least one of such meetings.

Held, That the persons who attended such meetings were agents of the respondent.

Two agents of the respondent gave a voter M. some whiskey on polling day, and took him in a boat to an island, where they stayed for some time. One of the agents then left, and the other sent M. to another part of the island for their coats. During M.'s absence the latter agent left the island with the boat, but M. got back in time to vote, being sent for by the opposite party.

Held, That the two agents were guilty of undue influence.

The respondent and one M. employed one H., a lawyer and professional public speaker, to address meetings in the respondent's interest, and promised to pay H.'s travelling expenses, if it were legal to do so.

Held (by the Supreme Court, reversing *Armour*, J.), that such a promise was not bribery (4 Sup. Ct. R. 430).

Held, *per Armour*, J., That the hiring of orators and canvassers at an election is bribery.

The petition contained the usual charges of corrupt practices.

Mr. D'Alton McCarthy, Q.C., *and Mr. T. G. Blackstock*, for petitioner.

Mr. J. K. Kerr, Q.C., *and Mr. Spragge*, for respondent.

The evidence affecting the election is sufficiently set out in the judgment, except as to the Hurd case, included in charges four and five. Hurd's evidence was to the effect that he was to address public meetings in the interest of the respondent, for which he claimed to be entitled to $1,000. The respondent's evidence was that Hurd was to address such meetings if his (the respondent's) friends approved of him, and that he was to be paid his travelling expenses, if it was legal to do so.

ARMOUR, J.—At the close of the evidence all the charges in the particulars were abandoned, except those numbered respectively 1, 2, 4, 5, 6, 7, 10, 11, 13, 15, 18, and 20.

These were more or less strenuously relied on by the petitioner's counsel, and at the close of the able arguments addressed to me by the counsel for both parties, I deemed it better, as some of the charges affected the respondent personally, that I should reserve my decision until I had had an opportunity of carefully perusing the shorthand

notes of the evidence, and of examining and considering the authorities bearing upon the several charges relied on. Having now done so, I proceed to dispose of the charges in the order in which they were presented to me in argument.

The first charge was bribery by the respondent of one Thomas Ellis by the offer of employment to him.

The evidence given by Ellis, so far as material to be considered, was to the following effect: "He (the respondent) asked me if I would vote for him; he asked me 'How was my vote,' and I said, 'it was all right;' he said, 'I heard you were such a hot-headed Tory that there would be no use in speaking to you about it;' I said, 'I am not that hard;' says he, 'Well, how is it?' I said, 'I guess I will vote for the home man;' then he says, 'There are quite a few Conservatives around here who are going to support me; I have done them some favors, and,' said he, 'I am going to get out some logs this winter, and I will give you a job of getting out the logs.'" Ellis swore that he placed no dependence on the offer, nor did he afterwards receive or look for a job. The respondent denied that he ever made any such offer to Ellis, and also denied that on the occasion of canvassing Ellis for his vote there was any conversation about his giving Ellis employment. I think that Ellis was a truthful witness, and his evidence was not in any way shaken by cross-examination, nor was it at all affected by the witnesses called to impeach it; but I think it would be very dangerous to hold that a mere offer of so indefinite a character, made after the vote had been promised, and upon which the voter placed no dependence, and which might have been understood by him differently from the way in which it was intended, was, on the evidence before me, so assuredly positive as to compel me to find the respondent guilty of bribery. I think what was said by Mr. Baron Martin in the *Cheltenham case* (1 O'M. & H. 64) is peculiarly applicable: "Where the evidence as to bribery consists merely of offers or proposals to bribe, the

evidence required should be stronger than that with respect to bribery itself; or where the alleged bribery is an offer of employment, it ought to be made out beyond all doubt, because when two people are talking of a thing which is not carried out, it may be that they honestly give their evidence, but one person understands what is said by another differently from what he intends it." I think that this charge was not made out beyond reasonable doubt, and I therefore determine that it was not proved.

The second charge was the hiring of a vehicle by one John Comley Widdifield, an agent of the respondent, to convey one Thomas Shean, a voter, to the poll. Shean was working at Bowmanville at the time of the election, and his wife and family were residing at Uxbridge village, where he had a vote, and Widdifield hired a vehicle from one Crawford, a livery stable keeper, and furnished it to Mrs. Shean, in order that she might go for her husband and bring him up to vote, which she accordingly did. It was attempted to be shown by the evidence of Widdifield that the vehicle in question was not "hired," and that the use of it was a free gift by Crawford; but I find on the evidence that Widdifield hired it, and that it was the understanding of both Widdifield and Crawford at the time the vehicle was bespoken that it was to be paid for. It was also contended that the hiring of this vehicle was not within clause 96 of the Dominion Elections Act, 1874, but I see no possible room for such a contention.

The real contention, however, was that Widdifield was not an agent of the respondent. There seemed to be in the evidence upon this charge, as well as upon many others in which the question of agency occurs, a singular want of candor on the part of some of the witnesses, and a manifest desire to conceal the truth. It seemed almost impossible to get any one to admit that there was a committee-room anywhere, or that there was a committee anywhere, or that he was on the committee, or who was

on the committee. They seemed to think that the question of agency depended altogether upon whether there was a committee or not, or whether the person who was charged with having been an agent was one of such committee. Fortunately for the purity of elections the law of agency in election matters is not a hard and fast law, capable of precise definition; it is a shifting, elastic law, capable of being moulded from time to time to meet the shrewd and astute inventions of those who in such matters seek to get rid of the consequences of their acts.

In the *Wakefield case* (2 O'M. & H. 102), Mr. Justice Grove, after adverting to the ordinary law of principal and agent, and the construction to be put upon the authority of the agent according to that law, says: "But if that construction of agency were put upon acts done at elections, it would be almost impossible to prevent corruption. Accordingly a wider scope has been given to the term agency in election matters, and a candidate is responsible generally, you may say, for the deeds of those who, to his knowledge, for the purpose of promoting his election, canvass and do such other acts as may tend to promote his election, provided that the candidate or his authorized agents have reasonable knowledge that these persons are so acting with that object. I think it well that I should say in this respect that here it is almost impossible for any Judge to lay down such exact definitions and limits as shall meet every particular case; and it is extremely important that the public should know that, because were it otherwise—were I, for instance, on the present occasion to pretend to lay down an exact definition of what constituted agency at one election—possibly in some other case that particular definition might be evaded, although what came substantially to the same thing might have taken place. Happily there is sufficient elasticity in the law to prevent that being the case; and here, again, those who think that they can evade the law by just creeping out of the words which learned Judges use, or even which tribunals use, upon a matter of this

sort, which is partly law and partly fact, will generally find that they are very much mistaken. It is therefore well that it should be understood that it rests with the Judge not misapplying or straining the law, but applying the principles of the law to changed states of facts, to form his opinion as to whether there has or has not been what constitutes agency in these election matters. It is well that the public should know that they cannot evade this difficulty by merely getting, as they suppose, out of the technical meaning of certain words and phrases."

The conclusion of fact I draw from what has passed in this matter is that a room was procured in the village of Uxbridge, where both the respondent and Widdifield resided, with the knowledge and concurrence of the respondent, at which private meetings were held of the friends of the respondent, some of which he attended; that there was no nominated committee; that these meetings were held to the knowledge of the respondent for the sole purpose of promoting and furthering his election; that the persons who attended such meetings were only the well known supporters of the respondent, persons with whom he had made common cause for the purpose of securing his election, persons upon whom he relied, and by whose exertions he trusted to secure it. The fashion now adopted is to repudiate the name of committee-meeting for such a gathering as that described, and for each of the persons so meeting together to disclaim the name of a committee-man, but the persons who met together in this case did precisely what committee-men are appointed in such cases to do, and were just as much committee-men as if they had called themselves so. Widdifield attended some of these meetings, and so attended for the like purpose and in the same capacity as the other persons who attended the meetings. At one of these meetings at which Widdifield attended the procuring of Shean's vote was a subject of discussion, and to Widdifield was afterwards assigned the duty of procuring it. Applying, then, the law as established by numerous authorities to the state of

facts found by me upon the evidence, there can be no doubt whatever that Widdifield was an agent of the respondent, one for whose acts the respondent must be held responsible. I determine, therefore, that the second charge was proved.

The next charge was bribery in the respondent settling the claim of one Hugh Munro. Munro had a claim against the respondent for some $30, which was of long standing, and when the respondent was nominated he thought "it was a good time to get him to pay his debts," and accordingly sued it. The claim was for timber used in the construction of a building and for the drawing of the timber—the respondent being the contractor, and one McKenzie his sub-contractor, for the construction of the building. The respondent had put off the payment of this claim from time to time, alleging that he wanted to see his sub-contractor, who, he said, was liable for a part of it, before settling it. After he was sued, and shortly before the election, he met one Brown, a son-in-law of Munro, who asked him why he did not settle Munro's claim, telling him that his enemies were making a handle of it, and that it was militating against him. The respondent explained to Brown why it had not been paid, and they then met Munro, when Brown said, "What about that debt; you are both here now." Munro said, "It is not paid yet." The respondent said, "I won't pay it till after the election, for it might affect the election." Other conversation followed not material to this inquiry. I am of the opinion that what was said by the respondent was in effect a promise that he would pay the claim after the election, that it was so understood, and that he intended it to be so understood by the persons to whom it was addressed; but I do not think that this promise was made to induce either Brown or Munro to vote for him, but for the purpose of silencing the hostile criticism that was being made upon his conduct in not paying Munro's claim, and the making of such a promise for such a purpose is not, in my opinion, under the circum-

stances of this case, bribery. I therefore determine that the seventh charge has not been proved.

The next charges were ten and eleven, the treating by James Cameron, by William Waddell, and Joseph Elliott on the polling day. Waddell and Elliott were voters at the polling subdivision which included and had its polling station in the village of Beaverton. James Cameron was a store-keeper and the postmaster at the same village. The facts were shortly these: On the morning of the polling day, and after the opening of the poll, Cameron met Waddell, who was his uncle, on the street, and asked him up to McKinnon's tavern to have a drink, where they found Joseph Elliott and one Neil Buchanan. Something was then said about voting, when Buchanan said he did not know how to mark his ballot. Cameron then took out of his pocket a blank ballot, and showed him how it ought to be marked, according as the party wished to vote for one candidate or the other. Cameron then said, "Come boys, let us have a drink, and then we will go up and burst their votes." The drink being duly disposed of, Cameron went to the poll, accompanied by Elliott and Buchanan. It was contended that the treating in question was a wilful offence against sec. 94 of the Dominion Elections Act (1874), and was a corrupt practice under sec. 98 of that Act. I cannot adopt that view, but feel bound to hold that the treating in this case was neither corrupt nor was it on account of the persons treated being about to vote. I therefore determine that these charges were not proved.

Charge thirteen was the treating by Archibald McKinnon of Thomas McCullough on the polling day. McKinnon was a blacksmith at Beaverton, and McCullough resided on Thorah Island, and was a voter at Beaverton. They were old friends, and whenever they met were in the habit of having a glass together. McCullough's account of what took place between them on polling day was not controverted, and I transcribe it: "I met McKinnon in the morning when I came over; he said, 'You have got

over; did you come over to vote?' I said 'Yes;' he said, 'Who are you going to vote for?' I said, 'I do not know yet;' he said, 'Come over to McKinnon's and have a drink;' we went over and had a drink; then he asked me to vote for Wheler, that Wheler was the best man; that was when we were having a drink; I said I would not know either of the candidates if they were in the room at the time. We sat down and talked awhile, and I told him I always voted on the other ticket—the Conservative—and he said, 'Come up and have another drink.' We had another drink, and then sat down and talked awhile again; he wanted, if I would not vote for Wheler, not to vote against him; I told him I would not promise. We had another drink; he still talked politics; that was about all that was said, only that he did not want me to vote against his party; we had four drinks altogether at this place. I went over and voted; after that I saw McKinnon; he said, 'You have done it;' I said, 'Done what?' 'Voted against me,' he said. He said, 'You voted for Mr. Gibbs;' I said 'I did;' said he, 'I do not want to darken your doors while you live, and I don't want you to come into mine.'" McKinnon denied that the drink was given for the purpose of influencing McCullough. I was at first disposed to think that the drink might be looked upon as a concomitant of, rather than an ingredient in, the persuasion exerted by McKinnon upon McCullough but a careful consideration of the evidence has compelled me to the conclusion that the drink was given for the purpose of corruptly influencing McCullough to vote or refrain from voting at the election. I will dispose of McKinnon's agency when I come to the disposal of charge twenty.

Charge fifteen was the treating by D. M. Card of one Thomas Fahey on polling day. Card was scrutineer for the respondent at No. 3 polling division of the township of Rama on the polling day. He took whiskey with him into the polling station and treated Thomas Fahey, who was the deputy returning officer there, and Edward

Fahey, who was the poll clerk, and another person named McDonald. Edward Fahey was a voter in Rama, at No. 2 polling division. I do not think this treating was corrupt, nor was it on account of the persons treated having voted or being about to vote. I therefore determine that this charge was not proved.

Charge eighteen is the hiring of a vehicle by Prosper A. Hurd to convey one George H. Neville, a voter, to the poll. Prosper A. Hurd was undoubtedly an agent of the respondent for the management of his election, and I find as a fact that he hired a vehicle from Charles McKenzie the day before polling day for the purpose of conveying George H. Neville to the poll; that both Prosper A. Hurd and Charles McKenzie understood that the vehicle hired was to be paid for, and $3 was accordingly charged by McKenzie to the respondent for it. I find also that Charles McKenzie knew the purpose for which the vehicle was hired. I also find that Luther Hurd was sent by Prosper A. Hurd with the vehicle to convey Neville to the poll, which he accordingly did. McKenzie was recalled near the close of the trial, and swore that if he had known that this rig was going to be used for conveying voters he would not have charged for it, forgetting no doubt that he had previously sworn that he knew that the rig engaged on the 16th (the rig in question) was to go after Neville to bring him to vote. I cannot find on such testimony as this that no charge was ever intended to be made for the vehicle in question. I determine that this charge is proved.

Charge twenty was a charge of undue influence practised upon William Murray by George Ross and John Cameron. As I find the facts, they were shortly these: Murray was a voter at Beaverton, as was also his brother, Angus Murray. Early on the morning of the polling day Ross and Cameron went to the house of Angus Murray, having previously provided themselves with the requisite amount of whiskey, supplied to them by Angus McKinnon. They went to see that Angus Murray was all right,

and having ascertained that he was all right, and would vote for the respondent, they gave him a drink, and then proceeded to the house of William Murray, who lived near the lake. Finding that William Murray was all wrong, and was going to vote for the petitioner, they gave him a drink, and persuaded him to go with them to Thorah Island in Cameron's boat, Cameron telling him that he would be back time enough to vote. They all went to the island in the boat, and landed first at McCullough's Point, where Ross looked at some saw logs. They then proceeded to Middle Point, and landed at the south side of it. There Cameron and Murray left their coats, and leaving Ross and the boat there went for a walk over the island, the object of the walk being, no doubt, the detention of Murray on the island till near to the time when they must necessarily start back in order to vote. Returning from the walk they came to the north side of the Middle Point, where they found the boat; then Cameron sent Murray across the point for their coats, and when he got Murray away he went off with the boat to Beaverton, leaving Murray there, and thinking no doubt that he had accomplished his purpose of preventing him from voting. Cameron says that when he started off with the boat he thought it was about four o'clock. Ross had previously gone across to Beaverton in the boat of one Warren, because, as he says, he was told that Cameron and Murray had got tired and gone back. Murray, however, did get back to vote close upon five o'clock, as he says a boat had been sent from Beaverton (no doubt by the opposite party) to fetch him.

Hearing the evidence given upon this charge, and seeing the bearing and demeanor of the witnesses, I could not resist the conclusion that Ross and Cameron had deliberately concocted the plan of getting Murray over to the island for the sole purpose of preventing him from voting.

The 95th clause of the Dominion Elections Act, 1874, provides that "every person who directly or indirectly, by himself or by any other person in his behalf . . .

by abduction, duress, or any fraudulent device or contrivance, impedes, prevents, or otherwise interferes with the free exercise of the franchise of any voter, or thereby compels, induces, or prevails upon any voter either to give or refrain from giving his vote at any election, shall be deemed to have been guilty of the offence of undue influence."

I think that Ross and Cameron did, by a fraudulent device and contrivance, impede, prevent, and interfere with the free exercise of the franchise of Murray, and were guilty of undue influence.

It was argued that inasmuch as Murray was ultimately able to exercise his franchise, and did so, the offence struck at by the Act was not committed, but I do not yield to this contention; his being able at last to exercise his franchise made it no less an offence in Ross and Cameron, by a fraudulent device or contrivance, to impede or interfere with the free exercise of it.

The question of the agency of Ross and Cameron and of Archibald McKinnon, remains to be considered.

What I have said on the subject of agency in dealing with charge three applies with equal force to the matter in hand.

What was done at Beaverton was almost precisely similar to what was done at Uxbridge village; private meetings were held here as there; they were held in a room in Angus McKinnon's hotel; the respondent attended at least one of these meetings; they were presided over by one George Bruce, an admitted agent of the respondent for the management of his election at Beaverton; they were held for the sole purpose of securing the respondent's election; the like persons in a like capacity and for a like purpose attended these meetings as the persons who attended the meetings at Uxbridge. All those who met together there were co-workers together for promoting the respondent's election, George Bruce being the chief. George Ross attended one of these meetings, John Cameron was at two of them, and Archibald

McKinnon was at one or two of them. McKinnon swore that he did not remember promising Bruce to see McCullough and try and get him to vote for Wheler, but he would not swear that that did not take place. I have little doubt that to Archibald McKinnon was assigned the duty of looking after McCullough on polling day. I have also little doubt that to Ross and Cameron was assigned the duty of looking after the two Murrays. Bruce swore that he understood on election day, not before, that Ross and Cameron were taking part for Wheler, and they did so, as far as appears, with his sanction.

I can come to no other conclusion on the evidence than that Archibald McKinnon, George Ross and John Cameron, were agents for the respondent. I determine, therefore, that charges thirteen and twenty were proved.

The only remaining charges are four, five and six, which were argued together, and which I will dispose of as they were argued. These were charges of bribery of Prosper A. Hurd (4), by the respondent (5), Thomas Paxton and (6) Joseph McClelland respectively; and in dealing with them it will be necessary for me to refer with some detail to the law as affecting the particular kind of bribery —bribery of influence—charged to have been committed.

The Dominion Elections Act, 1874, sec. 92, provides that the following persons shall be deemed guilty of bribery, and shall be punishable accordingly:

"(3). Every person who, directly or indirectly, by himself or by any other person on his behalf, makes any gift, loan, offer, promise, procurement, or agreement, as aforesaid, to or for any person in order to induce such person to procure or endeavor to procure the return of any person to serve in the House of Commons, or the vote of any voter at any election."

This latter subsection (under which these charges are said to come) is a condensation of the two former subsections; and an application of the acts, therein referred to, to bribery or influence would, if amplified, form like them two clauses, and would read as follows: Every

person who, directly or indirectly, by himself or by any other person on his behalf, gives, lends, or agrees to give or lend, or agrees or promises any money or valuable consideration, or promises to procure, or to endeavor to procure, any money or valuable consideration to or for any person in order to induce such person to procure, or to endeavor to procure, the return of any person to serve in the House of Commons, or the vote of any voter at any election; and every person who directly or indirectly, by himself or by any other person on his behalf, gives or promises, or agrees to give or promise, or offers or promises, any office, place, or employment, or promises to procure, or to endeavor to procure, any office, place, or employment, to or for any person in order to induce such person to procure, or to endeavor to procure, the return of any person to serve in the House of Commons, or the vote of any voter at any election.

It will be thus seen that the bribery of influence is defined in the same way and by the very same words as the bribery of voters, and it follows that the law applicable to the one is equally applicable to the other. Of the two modes—bribery of votes, and bribery of influence—the latter is the more effectual and the more pernicious. It is the more effectual, because the briber of the voter cannot, by reason of the ballot, know whether the voter has carried out the compact, but the briber of the influence sees and knows whether the influence bribed has been exerted. It is the more pernicious because its effects are more extensive; the briber of the voter gets that vote alone, the briber of the influence gets, almost as a matter of course, the vote of the person whose influence is bribed, and also the votes of all those affected by his influence. The evidence in this case affords an illustration of this, if such were wanted. Luther Hurd swore that he supported the respondent through his father's influence, because he thought his father was going to be benefited by it. It also appears that the benefit to be derived by the father-in-law Hurd was placed before the son-in-law Neville as an inducement to support the respondent.

The amount promised, whether it be large or small, makes no difference in the offence; it is as much bribery if one dollar was promised as it would be if a thousand were.

Mr. Justice Willes, in the *Coventry case* (20 L. T. N. S. 405), after quoting the same clauses in the Imperial Act as subsection 3, says: "Therefore anything, great or small, which is given to procure a vote, would be a bribe; and if given to another to purchase his influence at the election, it unquestionably also would be a bribe, and would void the election. It would have been bribery in the case of the person who gave, and in the case of the person who received, the benefit; and if Mr. Eaton had agreed to give Mr. Hill £5, I might say a farthing in point of law; if he agreed to give him anything, if only a peppercorn, for the purpose of purchasing any influence which Mr. Hill had with the electors of Coventry, and of advancing Mr. Eaton's interest as a candidate at the election, it would have been bribery, and it would have avoided the election."

Nor does it make any difference under what name the promised money is to be paid, whether for speeches to be made, or for influence to be exerted in any other way, and whether for loss of time and inconvenience, or for travelling or other expenses, the law is equally violated in one case as in the others.

If A says to B, "If you will come and vote for me I will pay your travelling expenses in doing so;" or if A says to B, "If you will come and endeavor to secure my return, I will pay your expenses in doing so," there can be no distinction in law between these proposals; if the one is illegal so is the other. The former has been determined to be bribery by the House of Lords in *Cooper* v. *Slade* (6 H. L. Cas. 746); the reasoning and result of that case apply with equal force to the latter, and the latter must be bribery too.

The payment of orators was likened in the argument to the payment of canvassers, and it was contended that

payment of canvassers was legal in Canada because it was legal in England; but this by no means follows. In England counsel are retained, attorneys and solicitors are employed, agents, canvassers, messengers, and watchers are hired, committees are furnished with refreshments, and enough money is spent in this and similar ways at an election there to corrupt and demoralize any constituency here if spent in a like manner.

I need only refer to the expenditure in the Westminster election of £9,000 sterling, which was held not illegal; and to the Argyleshire election but the other day, reported to have cost £16,000 sterling.

These expenditures, for the purposes I have above referred to, have been held in England to be authorized under the terms of the proviso appended to the enactment against bribery in the C. P. P. Act, 1854: "Provided always that the aforesaid enactment shall not extend or be construed to extend to any money paid or agreed to be paid for or on account of any legal expenses *bona fide* incurred at or concerning any election." And it has been there held that but for this proviso the payment of canvassers would be illegal. The framers of our Act, no doubt with the view of preventing such enormous expenditure as had been held in England to be legal under the terms of the proviso in the Imperial Act, discarded that proviso, and adopted the following: "Provided always that the actual personal expenses of any candidate, his expenses for actual professional services performed, and *bona fide* payments for the fair cost of printing and advertising, shall be held to be expenses lawfully incurred, and the payment thereof shall not be a contravention of this Act;" and in order that no illegal payments should creep in under the words "personal expenses," they were careful to define them by providing that "the words 'personal expenses,' as used in this Act, with respect to the expenditure of any candidate in relation to the election, shall include the reasonable travelling expenses of such candidate, and the

reasonable expenses of his living at hotels or elsewhere, for the purpose of and in relation to such election."

It will thus be seen how much more limited the expenditure must be under this proviso than under that in the Imperial Act.

It may be that this proviso in our Act does not cover every expenditure that may legally be made, but if any expenditure made outside of that permitted by the proviso should happen to be covered by the express words of the clauses relating to bribery, such expenditure will inevitably amount to bribery.

The hiring of orators and of canvassers is, in my opinion, outside of what is permitted by the proviso, and is within the very words of subsection 3, and is therefore bribery.

I am told that such hiring has been permitted as legal in other Provinces. The decisions in other Provinces do not bind me, and as in my opinion it is illegal, I shall hold to that opinion until a Court whose authority I am bound to submit to shall determine that the law may be violated in this way, and that bribery may assume this garb with impunity. Holding the view of the law which I have expressed, it is quite unnecessary for me to determine which was the true arrangement with Hurd—that deposed to by the respondent or that deposed to by Hurd. In my opinion they were both equally illegal. Mr. Paxton was in court, subpœnaed as a witness by the petitioner, and might have been called by either party, but neither saw fit to call him. His evidence would undoubtedly have furnished important materials upon which to come to a proper conclusion as to the true arrangement. Assuming then that the arrangement with Hurd, deposed to by the respondent, was the true arrangement, I find that such arrangement was so made by the respondent to induce Hurd to endeavor to secure the return of the respondent to serve in the House of Commons, and that the respondent was thereby guilty of bribery within subsection 3 of section 92 of the Dominion Elections Act of 1874.

I therefore determine that charge four was proved. I also determine that charge five was, and charge six was not, proved.*

I further determine that the said election was void, and that the same must be set aside with costs, to be paid by the respondent to the petitioner, and shall certify the same to the Speaker of the House of Commons, and shall report to him as required by law.

From Mr. Justice Armour's judgment on charges four and five, the respondent appealed to the Supreme Court of Canada, and the appeal was allowed with costs; the Supreme Court holding, on the evidence, that the respondent only agreed to pay Hurd's travelling expenses if it was legal for him to do so, and that such a promise was not a violation of subsec. 3 of sec. 92 of the Dominion Elections Act, 1874 (4 Sup. Ct. R. 430).

(15 *Commons Journal*, 1881, p. 2).

* The learned Judge referred to the case of *Wood* v. *Lycett*, reported in the London *Times* of 29th January, 1879, the facts of which were as follows: Plaintiff and defendant were candidatee for Worcester at the then last election. Plaintiff agreed to retire and to assist the defendant, for which he was to receive £70 for his assistance and certain sums spent by him in payment of canvassers and other election expenses. At the close of the evidence, Baron Huddleston said that both parties were guilty of a misdemeanor in entering into such a transaction, which was clearly a corrupt payment. As to the other items, he held that not having been made through the election agent, and the bills for the same not having been sent in within the month after the election, they were not recoverable.

CORNWALL (3).

BEFORE MR. JUSTICE ARMOUR.

CORNWALL, *17th and 18th June, 3rd October, 15th December, 1879.*

DONALD BAN MACLENNAN, *Petitioner*, v. DARBY BERGIN, *Respondent.*

Commission to examine witnesses in a foreign country—Disqualification of petitioner—Agents and sub-agents—Colorable purchases—Bribery—Costs.

A Commission to examine witnesses in a foreign country may be issued in the case of the trial of an election petition.

In order to disqualify the petitioner acting as such, the respondent offered to prove (1) that the petitioner had been reported by the Judge trying a former election petition as guilty of corrupt practices; (2) that the petitioner had in fact been guilty of corrupt practices at such election; and (3) that he had been guilty of corrupt practices at the election in question.

Held, that such evidence, if offered, would not disqualify the petitioner as such.

Held, further, that as the petitioner did not claim the seat, evidence could not be gone into for the purpose of personally disqualifying him.

One C. canvassed for the respondent, and told the respondent he was going to support him, and the respondent expected and understood that he would do everything he could for him legitimately. C. did not attend any meetings of the respondent's committees, and made no returns of his canvassing.

Held, on the evidence set out in the judgment, that C. was an agent of the respondent for the purposes of the election.

The agent, C., employed one W. to go with him on the evening before the election to several electors, from whom both C. and W. made colorable purchases, but with the corrupt intention of inducing the persons from whom the purchases were made to vote or refrain from voting at the election.

Held, that C. and W. were guilty of bribery, and that the election was avoided in consequence of their corrupt acts.

The petitioner was allowed his costs, but not the costs of the charges which he failed to establish.

The petition contained the usual charges of corrupt practices.

During the proceedings at the trial it appeared that a necessary and material witness for the petitioner had removed to the State of Michigan, whereupon the learned Judge adjourned the trial so that an application might be made before him in Chambers for the issue of a commission. The learned Judge afterwards, on the authority of the *Wallingford case* (1 O'M. & H. 57) and *Staley-*

bridge case (19 L. T. N. S. 703), made the order for a Commission. (See the report of the application, 8 P. R. 64).

Mr. Bethune, Q.C., *and Mr. Riddell*, for petitioner.

Mr. Hector Cameron, Q.C., *and Mr. Bergin*, for respondent.

ARMOUR, J.—The counsel for the respondent at the commencement of the trial took the objection that I had no jurisdiction to try this cause, which objection I overruled.

He also at the same time offered to prove that the petitioner had been reported to the Speaker of the House of Commons as having been guilty of corrupt practices at the said election for the said electoral district, held on the 29th of January, 1874, by the Judge who tried a petition in respect of such last mentioned election, and to prove that the petitioner had in fact been guilty of corrupt practices at that election; and had also been guilty of corrupt practices at the election for the said electoral district, held on the 17th of September, 1878; and contended that such proof being given, disqualified the petitioner from being a petitioner in this cause.

I rejected the proof so offered, holding that if given it would not have the effect contended for: *South Huron case* (29 C. P. 301).

He also at the close of the petitioner's case offered to prove the same facts for the purpose of disqualifying the petitioner; but inasmuch as the petitioner did not claim the seat, I considered such proof irrelevant, and refused to receive it.

[The learned Judge here referred to charges on which evidence had been given, but which he held not proved].

The remaining charges relied on by the petitioner's counsel must be determined by the construction to be put upon the acts of George Crites and Henry White on the night before the election, and by the responsibility of the respondent for such acts.

George Crites describes the manner of his becoming acquainted with Henry White and what transpired before his introduction to him, rendering such introduction necessary, and the circumstances attending such introduction.

[The learned Judge here read his notes of the evidence, the substance of which is hereinafter referred to].

Henry White was a drover, who lived close to Northfield, and happened to go down to Alguire's Hotel the evening of the 16th of September. He did not know Crites wanted to see him. He didn't know Crites. Mr. Fulton introduced him to Crites, and he gave him a package, telling him that he got it at Ottawa Hotel. White opened the package and found $45.00 in it, but no letter. He put the money in his pocket with his other money. He didn't ask Crites who it was from, nor for any explanation about it. He was not surprised at receiving it, nor did he think it strange. He made no remark about it. He had no idea who sent it to him, nor for what purpose, nor that it was to be used in the election.

After White and Crites became acquainted, they got to know from each other that they were both supporters of Dr. Bergin, the respondent, and they took tea together at Alguire's.

Crites found out that Dr. Mattice and Henry Sandfield Macdonald were at Northfield; and he and White both concluded from that fact, and from the knowledge they said they had of their ways, and of the corruptibility of the voters in that locality, that they were there for the purpose of buying votes, and Crites said it was his business to watch them. White said that he had got a message from Mr. Moss, for whom he had been buying stock, to drive the stock into Northfield in the morning, and he would go with him. They went together. They went first to William Bender's. White paid Philip Bender $2.00 to help to drive stock next day, a service Bender did not perform; and Crites bought fifty pounds of butter

from him at 16 cts. a pound, and paid him the price, $8.00, which butter Bender afterwards delivered. They next visited Samuel Bender, from whom White bought a sheep, which Bender said was worth $3.25, for which White paid him $5.00. White swore it was worth $5.00. And Crites bought 25 lbs. of butter to be afterwards delivered, but which never was, on account of which he paid $2.00. They next visited David Louc:s, from whom White bought a cow for $25.00, and paid $6.00 on account. The cow was delivered next morning, but she got away again and went home, and White never got her. They next visited George Bender. White had previously bought sheep from this Bender, for which he was to pay $10.75; and according to Bende 's account, he told him that night that if he would vote he would give him $14.00 for them. White denied this, but admitted paying $4.00 on account of the sheep that night. They next went to William Arbuthnot's, Crites stayed on the road, and White went into the house. He gave Arbuthnot $4.00, he said, on account of stock, which he got next morning. Arbuthnot said he gave it to get him out to vote. They went to Jas. McBride's, after which Crites went home, leaving White to pursue his journey alone. He called on James T. Wesley, and paid him $5.00 on account of a cow he had bought from him for $20.00. White took the cow about four weeks after, and paid the balance. He visited Aaron Wesley, from whom some time previously he had bought sheep for $14.00, and had paid $4.00 on account, and according to Wesley's account, agreed to give him $2.00 more on the sheep if he would vote for the respondent. This White denied. White bought a heifer from Alpheus Runions, whom he found at a paring bee that night at Markle's, for $12.00, and paid him $4.00 on account. Runions never got the balance, nor White the heifer. White also met James Runions at the paring bee, and from him he bought two lambs at $4.00 each. This took place about midnight.

I have carefully considered the evidence of Crites and White above referred to, and, reading it with the other evidence adduced, I have come to the following conclusions of fact:

That Crites went to Northfield on the evening of the 16th September, for the purpose of taking to White the package of money left at the Ottawa Hotel. That Crites knew when he got the package that it contained money that was being sent to White to be used corruptly at the election. That he delivered the money to White with the knowledge and intention that it would be so used. That White so used the whole or part of it, and that Crites was present and assenting to a part of it being so used. That the purchases, promises and payments made by White on that night were made and paid by him with the corrupt intention of inducing the persons, from whom and to whom they were made, to vote or refrain from voting at the election, and that the said White was therefore guilty of bribery.

That the purchases and payments made by Crites on that night were made by him, and paid by him, with the corrupt intention of inducing the persons from whom and to whom they were made to vote or refrain from voting at the election, and that the said Crites was thereby guilty of bribery.

The only remaining question is, was Crites a person for whose acts the respondent must be held responsible? If he was such a person, then the respondent must be also held responsible for the acts of White—for Crites employed him. See the *Bewdley case* (1 O'M. & H. 18).

I extract the evidence bearing upon the question of Crites' agency. Crites said: "I took part in the election on the Doctor's side. . . . I canvassed for about a week. I was almost in every part of the township. I had business of my own, and as I met parties I spoke in favor of the Doctor. I saw the Doctor, but did not converse with him. I cannot say whether he knew I was canvassing. He did not meet me out canvassing. I may have passed

him on the street; I gave him no account of the progress I made. I may have told him so and so was going against him. I did not tell him to see any particular person." James Kirkpatrick, secretary of the Conservative Association, said: "I understood that Crites was a supporter of the Doctor's. I did not think that he was doing more than a hundred others. I had no communication with him about what he was to do. He made no returns; we had no regular returns. He never attended a meeting, or gave any information. . . . I am sure that he never attended a committee meeting at all; I attended every meeting regularly. There would be a couple of dozen at the meeting. I knew that he had been canvassing like others. I would have noticed him had he been present. . . . There were a great many others who actively supported us that did not come at all. He was not canvassing regularly. We did not furnish books to anybody for that purpose. I know people who were more active than he. . . . I know that Crites supported the Doctor, but he was not canvassing regularly. I suppose there were about one hundred canvassing the same way as he was. He was not employed by the committee to go around. . . . Of my own knowledge I do not know of any one Crites canvassed. I suppose he was canvassing, asking people as he happened to meet them for their votes. I knew that he was always an active man in elections; I mean that he is a man who always works hard during an election; he did in this case as in others. He took no part so far as active co-operation at the meetings is concerned; he never attended any of the meetings. I knew he was a Conservative, and took for granted that he was supporting the Doctor."

The respondent said: "I was not certain till a short time before the election what course George Crites would take, knowing his warm personal friendship for Mr. Maclennan on the one hand, and his strong political feeling the other way. I met him, and he told me he was going to support me. I think this was after the writ issued,

but before nomination. I do not think I told him I hoped he would do all he could for me; I did not point out anything he could do for me in particular. Of course, when I asked a man for his support, and he promised to give it to me, I expected and understood he would do everything he could for me legitimately—this applies to Crites individually. . . . I was not aware of George Crites going out to the west side of the township on the night of the 16th of September, nor do I know it now. I think I knew at the time of the nomination that Crites was a supporter of mine, and I believe he is a man who would do all that he could once that he took sides."

I had occasion in the *North Ontario Election case* (*ante* p. 785) to express my views at some length, supporting them by authority, on the question of agency as applicable to parliamentary elections. And it is, therefore, needless for me to do more than refer to that case, and to say that, applying the views that I then expressed to the present case, I am compelled to the conclusion that I must, upon the evidence here set out, hold Crites to have been a person for whose acts, in relation to this election, the respondent must be held responsible.

I find, therefore, these charges proved. And I determine that the election and the return of the respondent are void.

The petitioner will get his costs; but he will tax no costs in respect of the charges which he has failed to establish.

(14 *Commons Journal*, 1880, p. 2).

DIGEST OF CASES.

ADMISSIONS.—(1.) **Of Bribery.**—1. The respondent, a week before the trial, served a notice on the petitioner admitting bribery by one of his agents, and notifying the petitioner not to incur further costs. At the trial the respondent, pursuant to the notice, gave evidence of bribery by an agent, which the Court held sufficient to avoid the election. The petitioner then contended that he had a right to show that corrupt practices had extensively prevailed, and that the respondent had been personally guilty of corrupt practices. *Held*, that the functions of the Court were judicial and not inquisitorial, and that no further evidence should be received on the issue as to the avoidance of the election on account of bribery by agents. But if incidentally it should appear, in the inquiry as to the personal charges against the respondent, that corrupt practices extensively prevailed, the same would be certified in the report to the Speaker. *West Northumberland*, 562.

2. Before the trial the respondent served a notice upon the petitioner, admitting that the election must be avoided on the ground of bribery by an agent without his knowledge or consent. Such admission was acted upon at the trial, and the election avoided accordingly. *North Simcoe*, 624.

—— (2.) **Of Counsel.**—1. The admission of counsel in open court,—that the giving of $2 to a voter by an agent of the respondent, after such voter had voted, such voter admitting that he did not know why the $2 was given to him, was bribery,—acted upon, and the election avoided. *Carleton*, 6.

2. The respondent had a majority of 261 votes at the election, and at the trial his counsel admitted that there was evidence which would have the effect of avoiding the election under R. S. O., c. 10, s. 159; and the Court, on such admission, declared the election void. *Dufferin*, 530.

See also pp. 45, 199, 203.

AGENCY.—1. To sustain the relation of agency, the petitioner must show some recognition by the candidate of a voluntary agent's services. The *Westminster case* (1 O'M. & H. 89) as to agency followed. *Welland*, 47.

2. Agency in election matters is a result of law to be drawn from the facts of the case, and the acts of the individuals. *East Peterboro*, 245.

3. Acts of agency and the decisions bearing thereon, discussed. *North Ontario*, 304.

4. The Parliamentary law of agency is a special law, and is different from the ordinary law of agency. In Parliamentary elections the principal is liable for all acts of his agent, even where such acts are done contrary to the express instructions of such principal. *Cornwall*, 547.

5. Mere canvassing of itself does not prove agency, but it tends to prove it. A number of acts, no one of which might in itself be conclusive proof of agency, may, when taken together, amount to proof of such agency. *Ibid.*

6. If a candidate in good faith undertakes the duties which his agent might undertake, the acts of a few zealous political friends in canvassing for him, introducing him to electors, attending public meetings and advocating his election, or bringing voters to the poll, would not make such candidate responsible for prohibited acts contrary to his publicly declared will and wishes, and without his knowledge and consent. *South Norfolk*, 660.

7. Remarks on the evidence of agency. *Ibid.*

8. The law of election agency is not capable of precise definition, but is a shifting elastic law, capable of being moulded from time to time to meet the inventions of those who in election matters seek to get rid of the consequences of their acts. *North Ontario*, 785.

AGENTS.—(1.) **Generally.**—1. When a candidate puts money into the hands of his agent, and exercises no supervision over the way in which the agent is spending that money, but accredits and trusts him, and leaves him the power of spending the money, although he may have given directions that none of the money should be improperly spent, there is such an agency established that the candidate is liable to the fullest extent not only for what that agent may do, but also for what all those whom that agent employs may do. *South Grey*, 52.

2. Evidence was given to show that certain parties had attended meetings with the respondent and canvassed for him, and had performed other acts of alleged agency, as set out in the evidence. *Held*, that the acts of alleged agency relied on in the evidence were not sufficient to constitute such parties the agents of the respondent. *North York*, 63.

3. Money was paid by an agent of the respondent ($7 each) to certain voters for canvassing, they observing that "a little money in election time was allowed for knocking around," which observation the agent considered "going about to solicit votes." The agent denied it was paid with any corrupt intent, although his evidence was not satisfactory. The voters swore the money was paid to their wives, and the agent was not recalled to explain it. *Held*, that although such payment might be open to an unfavorable interpretation, it was not, according to the evidence, inconsistent with being made without any improper motive. *West Toronto*, 97.

4. Observations on the reasons why candidates should be held liable for acts done by their agents. The *Taunton case* (1 O'M. & H. 184) approved. *Ibid.*

5. A witness stated that he had asked the people in his neighborhood to vote for the respondent, had attended a meeting of the respondent's friends, and made arrangements for bringing up voters on polling day, and had a team out on polling day. *Held*, that the evidence of his being an agent of the respondent was not sufficient. *East Peterboro*, 245.

6. One C. accompanied the respondent when going to a public meeting, and canvassed at some houses. On the journey, the respondent cautioned C. not to treat, nor do anything to compromise him or avoid the election. The respondent's election agent paid for C.'s meals at the place where the meeting was held. *Held*, that the evidence showed that the respondent had availed himself of C.'s services, and was therefore responsible for his acts. *Ibid.*

7. One S., who desired nomination as a candidate by a Reform Convention, was not nominated, and thereupon, from hostility to the convention and its nominee, opposed the candidate of the convention, which thereby had the effect of supporting the respondent. At the close of the poll, the respondent publicly thanked S. for being instrumental in bringing about his election. S. owned a shop and tavern, but the license for the latter was in his clerk's name; and during the polling hours on polling day spirituous liquors were sold and given in the shop and tavern. *Held*, that what was done by S. at the election was in pursuance of a hostile feeling against the convention and its candidate, and did not constitute him an agent of the respondent. *Cardwell*, 269.

8. One M., the reeve of a township, exerted himself strongly in favor of the respondent, to whom he was politically opposed, and against the other candidate, and attended meetings where the respondent was, and spoke in his favor. The reason for his supporting the respondent and opposing the other (ministerial) candidate, with whom

he was politically in accord, was, that the ministry of the day had separated the township of which he was reeve from the riding. The respondent asked M. to attend a public meeting, which he did; and at another meeting which he attended, M. stated (but not in the respondent's hearing) that he was acting there on the respondent's behalf. M. was once in the respondent's committee-room, and signed and circulated circulars issued by the respondent's friends. *Held*, that the question of agency being one of intent, the respondent, under the circumstances, never conferred upon M. the authority, nor did M. accept the delegation, of an agent for the purposes of the election. *North Grey*, 362.

9. Persons who canvassed and went to meetings with the respondent, and attended meetings to promote the election, at which meetings the respondent attended; and persons who canvassed with and introduced voters to the respondent, called meetings and appointed canvassers, and did other acts to further the election, and examined the results of the canvass, were held to be agents of the respondent; and corrupt practices committed by them, and by sub-agents appointed by them, avoided the election. *Cornwall*, 547.

10. The respondent in his evidence stated that he objected to committees; that he knew certain persons were his supporters, and believed they did their best for him, but he did not personally know that they acted for him. Other evidence showed that these persons took part in the election on behalf of the respondent; some spoke for him at one of his meetings; and one of them stated that he and some of the others canvassed for the respondent, and that he gave the respondent to understand he was taking part in the election for him. *Held*, that as it did not appear that any one of these persons was authorized by the respondent to represent him, and as they did not claim to have any such authority from him, but supported the respondent as the candidate of their party, the said persons were not agents of the respondent for the purposes of the election. *South Norfolk*, 660.

11. *Semble*, if a candidate who had appointed no agents was aware that some of his supporters were systematically working for him, and by any act, or forbearance, could be fairly deemed to recognize and adopt their proceedings, he would make them his agents. *Ibid.*

12. One P., a tavern-keeper, took the petitioner's side at the election and at a meeting called by the petitioner, at which he was appointed chairman. Notices of this meeting were sent by the petitioner to P. to distribute, some of which P. put up at his house and some he sent to other places. On polling day P. desired to give a free dinner to some of the petitioner's voters, and asked the petitioner if he might do so. The petitioner did not approve of it in case it should interfere with his election, and warned P. that although he was not his (petitioner's) agent, he would rather he should not do it. P., notwithstanding this, paid for free dinners to 40 of the petitioner's voters. *Held*, by the Court of Queen's Bench (affirming *Wilson*, J.), that P. was not an agent of the petitioner. *North Victoria* (2), 671.

13. A year before the election the respondent paid part of the charges of a lawyer retained by one O. to attend the revision of the assessment rolls. O. at the time of the election attended one of the respondent's meetings, at which he stated that his own mind was not made up, but he urged that the respondent ought to have the support of the voters, he being a local man; and in three or four instances O. asked voters to vote for the respondent. The respondent and his friends distrusted O., and in no way recognized him as acting with them. *Held*, that O. was not an agent of the respondent for the purposes of the election. *Halton*, 736.

14. One C. canvassed for the respondent, and told the respondent he was going to support him, and the respondent expected and understood that he would do everything

he could for him legitimately. C. did not attend any meetings of the respondent's committees, and made no returns of his canvassing. *Held*, on the evidence set out in the judgment, that C. was an agent of the respondent for the purposes of the election. *Cornwall* (3), 803.

—— (2.) **Committees.** — 1. One M. was a member of a township committee, organized by direction of the convention which nominated the respondent, and the work of the election was put into the hands of these township committees. M. canvassed his school section, and had a voters' list, which was taken from him by the committee on the allegation that he was not doing much. The respondent never asked M. to work for him, but M. asked the respondent what success he had. The respondent had no one acting for him except these committees and some volunteers, and he never objected to the aid they were giving him, nor did he repudiate their services. *Held*, on the evidence, that the respondent was responsible for these committees, and that M., as a member of one of such committees, was an agent of the respondent. *North Ontario*, 304.

2. About a dozen of the electors met some time before the election and nominated the respondent as the candidate who should contest the election in the interest of the political party to which they belonged. The respondent accepted and acted upon the nomination. They met occasionally for the purpose of promoting the respondent's election, procured voters' lists, canvassed voters, and got reports on which they estimated their chances of success. *Held*, that if they did not style themselves a committee, they had assumed the functions which usually devolve upon such bodies. *North Wentworth*, 343.

3. The respondent was nominated by a Conservative association, and he accepted the nomination. The delegates to the association were to do all they could to secure his election. A committee was appointed in O. to canvass the town, and a committee-room was engaged and paid for by the association, voters' lists were procured and used as canvassing books, and members were appointed to canvass parts of the town, and reports were made to the committee of the result of the canvassing. The respondent, who resided at W., did not attend the meetings, but knew they were canvassing for him, and gave them blank appointments of scrutineers to fill up, which they did, but the respondent did not know who composed the committee. *Held*, that the respondent, by authorizing such committee at O. to appoint scrutineers, made them his special agents for that particular matter and for that occasion only, and did not adopt them as his general agents for all the purposes of the election. *South Ontario*, 420.

4. One T., a member of such committee, canvassed actively for the respondent and to his knowledge, and on the nomination day attended a meeting of the respondent's friends in W., at which the respondent was present, and at which arrangements were made about canvassing and getting out votes, and generally about the election. *Held*, by the Court of Appeal (*Wilson*, J., *dubitante*), that T. was an agent of the respondent for the purposes of the election. *Ibid.*

5. One G., a member of the same committee, had a voters' list, and canvassed for the respondent, and stated he had no doubt the respondent expected him to vote and work for him. *Held*, that G. was not an agent of the respondent. *Ibid.*

6. The committee at the town of W., having been recognized and attended by the respondent, were held to be his agents. *Ibid.*

7. One B. was a member of the committee at W. for the respondent's election, canvassed for him, and met him at the committee-rooms once or twice. B. was also appointed in writing by the respondent to act as scrutineer for him on the polling day, and during polling hours gave whiskey to the Deputy Returning Officer in the polling booth. *Held*, that B., while acting as such scrutineer, was not acting

in his former capacity as committeeman or agent of the respondent, and that his appointment as scrutineer did not empower him to do an act of treating so as to make the respondent answerable for it. *Ibid.*

8. If a meeting of electors assembles and has the sanction of the candidate, such candidate is responsible for its acts and the acts of the agents appointed by it. *Cornwall*, 547.

9. But where the meeting is large, then all present cannot be considered as agents; only those to whom certain duties, either as a committee or as individual canvassers, are assigned. *Ibid.*

10. The respondent nominated no committees to promote his election; but he was aware that committees were acting for him in each municipality. On one occasion he went to the door of one of the committee-rooms, and left some printed bills to be distributed. One P., who attended the meetings of this committee, and said he was considered on the committee, committed an act of bribery. *Held*, that the committee were agents of the respondent, that P. was a member of the committee; and an act of bribery having been committed by him, the election was avoided. *East Northumberland*, 577.

11. A room was procured at which private meetings were held of the friends of the respondent to promote his election—some of which meetings he attended. One W. attended these meetings, and was appointed to procure the vote of a certain voter who was absent from the riding. W. hired a vehicle to convey the voter to the poll. *Held*, that W. was an agent of the respondent, and that his hiring such vehicle was a corrupt practice. *North Ontario*, 785.

12. Certain supporters of the respondent met in a room over a tavern to promote the election of the respondent. Their meetings were presided over by an agent of the respondent, and the respondent attended at least one of such meetings. *Held*, that the persons who attended such meetings were agents of the respondent. *Ibid.*

—— (3.) **Political Associations.**—1. The delegates to a political convention assembled for the purpose of selecting a candidate, who never had intercourse with the candidate selected, and who never canvassed in his behalf, cannot be considered as agents for such candidate. *Welland* (2), 187.

2. Where a political organization, after nominating their candidate, divided into committees "to look after voters in the particular wards in which they resided;" and the respondent had not given authority to any member of such committees, nor to any canvasser, to canvass generally. *Held*, that one K., who was a member of the Committee for Ward No. 2, and who was alleged to have committed an act of bribery in Ward No. 6, having no authority to canvass in the latter ward, was an agent with limited authority to canvass in Ward No. 2 only, and therefore the respondent could not be made liable for his alleged acts. *London*, 214.

3. The fact of a political association putting forward and supporting a particular candidate does not make every member of the association his agent; but the candidate may so avail himself of their services in canvassing for him and promoting his election, as to make them his agents. *North Grey*, 362.

4. By the constitution of the Reform Association, each delegate to the convention was actively to promote the election of the candidate appointed by the convention. The respondent had himself been for six years a member of the association, and was familiar with its objects and constitution. He had also as a delegate acted and canvassed for other candidates in the promotion of their elections, and expected the like assistance from the present members of the Association, and to the perfection of that system as an electioneering agency, the respondent owed his election. *Held*, that the delegates to the association, acting as such in promoting the election of the respondent, were his agents, for whose acts he was responsible; and that an act of bribery

committed by one R., a delegate to such association, and who canvassed and otherwise acted for the respondent, avoided the election. *East Northumberland*, 387.

—— (4.) **Sub-Agents.**—1. The respondent gave to one H. some canvassing books, with directions to put them into good hands to be selected by him for canvassing. H. gave one of the books to B., a tavern-keeper, and B. canvassed for the respondent. B. was found guilty of a corrupt practice in keeping that part of his tavern wherein liquors were kept in store, so open that persons could and did enter the store-room and drink spirituous liquors there during polling hours on the day of election. *Held*, that H. was specially authorized by the respondent to appoint sub-agents, and had under such authority appointed B. as a sub-agent, and the corrupt practices committed by B. as such sub-agent of the respondent avoided the election. *Welland* (2), 187.

2. The persons amongst whom the respondent's moneys had been distributed by W., an agent of respondent, and persons acting under them, were sub-agents of respondent, and that their corrupt acts avoided the election. *Niagara*, 568.

3. *Semble*, that no limit can be placed to the number of parties through whom the sub-agency may extend. *Ibid.*

ALIENS.—1. The respondent attacked the qualification of one of the petitioners on the grounds that he was an alien. The learned Judge admitted the evidence, but held that the evidence as to petitioner having lived in the United States, without showing that his parents were American citizens, was not sufficient to establish the charge of alienage. *Prescott*, 1.

2. Where the voter was born in the United States, his parents being British-born subjects, his father and grandfather being U. E. Loyalists, and the voter residing nearly all his life in Canada: *Held*, entitled to vote. *Stormont*, 21.

3. An alien who came to Canada in 1850, and had taken the oath of allegiance in 1861, but had taken no proceedings to obtain a certificate of naturalization from the Court of Quarter-Sessions, was held not qualified to vote.—*Bacon's vote. Brockville*, 129.

4. Nor was an alien, whose father had taken the oath of allegiance on obtaining the patent for his land under 9 George IV., c. 21, qualified to vote.—*Heuley's vote. Ibid.*

5. The evidence that the parents of a voter had stated to such voter that he was born in the United States, but that his father was born in Canada, received, and the vote held good.—*Wright's vote. Ibid.*

6. Where evidence was given of parol admissions made by certain voters, some years before the election, that they had been born in a foreign country, and also evidence that since the parol admission the voters had voted at Parliamentary elections, and had sworn to the voter's oath as to being British subjects by birth or naturalization: *Held*, (1) That the oath at the polls could not be treated as testimony, not having been given in any judicial proceeding. (2) That by swearing at the polls he was a British subject by birth or naturalization, the voter only stated the legal result of certain facts. (3) That there was therefore no presumption of naturalization sufficiently strong to rebut the presumption of the continuance of the original *status* of alienage.—*Shenck's vote. Lincoln* (2), 500.

7. Where a voter, in support of his own vote, swore that he was born in the United States but that his parents were British subjects: *Held*, that the whole statement of the voter must be taken, and that it amounted to this: "I was born in the United States of British parents."—*Mulrennan's vote. Ibid.*

8. Certain aliens had taken the oaths of allegiance, &c., before a Justice of the Peace of a town, which oaths were administered to them in a township, but within the same county. *Held*, that under the Alien Act 34 Vic., cap. 22, sec. 2, (Can.), the Justice of the Peace in administering the oaths, was acting ministerially and not judicially;

and that the oaths were properly administered.—*Johnson's vote. Ibid.*

APPELLATE COURT.—1. An appellate court will not, except under special circumstances, interfere with the finding of the court of first instance on questions of fact depending on the veracity of witnesses and conflicting evidence. *Halton*, 283.

2. In penal statutes questions of doubt are to be construed favorably to the accused, and where the court of first instance in a quasi criminal trial has acquitted the respondent, the appellate court will not reverse his finding. *North Ontario*, 304.

3. The petitioner was not allowed to urge before the Court of Appeal a charge of corrupt practices against the respondent personally, which had not been specified in the particulars, or adjudicated upon at the trial of the petition. *South Ontario*, 420.

ASSESSMENT ROLL.—1. The only question as to the qualification of a voter settled by the Court of Revision, under the Assessment Act, is one of value. *Stormont*, 21.

2. Parol evidence is inadmissible to alter the value assessed against property in the assessment roll. *South Grenville*, 162.

3. The assessment roll is conclusive as to the amount of the assessment; but the mere fact of the name of a person being on the roll is not conclusive as to his right to vote. The Returning Officer is bound to record the vote if the person takes the oath, but that is not conclusive. *North Victoria*, 584.

See R.S.O., c. 9, s. 8, and 41 Vic., c. 21, O.

ATTORNEY.—The attorney for the respondent may be ordered out of court when a witness is being examined on a charge of a corrupt bargain for his withdrawal from the election contest, when the evidence of such witness may refer to the sayings and doings of such attorney in respect of such withdrawal. *South Oxford*, 243.

BALLOTS.—1. The following ballots were held valid: (1) Ballots with a cross to the right just after the candidate's name, but in the same column and not in the column on the right hand side of the name. (2) Ballots with an ill-formed cross, or with small lines at the ends of the cross, or with a line across the centre or one of the limbs of the cross, or with a curved line like the blades of an anchor. *North Victoria*, 671.

2. The following ballots were held invalid. (1) Ballots with a single stroke. (2) Ballots with the candidate's name written thereon in addition to the cross. (3) Ballots with marks in addition to the cross, by which the voter might be identified, although not put there by the voter in order that he might be identified. (4) Ballots marked with a number of lines. (5) Ballots with a cross for each candidate. *Ibid.*

3. *Quære*, whether ballots with a cross to the left of the candidate's name should be rejected, as the Deputy Returning Officer is not bound to reject such ballots under sec. 55 of the Dominion Elections Act, 1874. *Ibid.*

4. The following irregularities in the mode of marking ballot papers, held to be fatal: (1) Making a single stroke instead of a cross. (2) Any mark which contains in itself a means of identifying the voter, such as his initials or some mark, known as being one used by him. (3) Crosses made at left of name, or not to the right of the name. (4) Two single strokes not crossing. *Monck*, 725.

5. The following irregularities held not to be fatal: (1) An irregular mark in the figure of a cross, so long as it does not lose the form of a cross. (2) A cross not in the proper compartment of the ballot paper, but still to the right of the candidate's name. (3) A cross with a line before it. (4) A cross rightly placed, with two additional crosses, one across the other candidate's name, and the other to the left. (5) A cross in the right place on the back of the ballot paper. (6) A double cross or two crosses. (7) Ballot paper inadvertently torn. (8) Inadvertent marks in addition

to the cross. (9) Cross made with pen and ink instead of a pencil. *Ibid.*

6. The neglect of a Deputy Returning Officer to initial the ballot papers, and to provide pen and ink instead of a pencil to mark them, would not avoid the election. *Ibid.*

7. The petitioner had received a majority of the ballots cast at the election; but on a recount before the County Judge, certain ballots, with other marks on the back than the initials of the Deputy Returning Officers, were rejected by the County Judge, thereby giving a majority to the respondent. Evidence was given on the hearing of the petition that the Deputy Returning Officers had, from a mistaken idea of their duty, placed the numbers of the voters, as marked in the voters' list, on the backs of the ballots. *Held*, that under 42 Vic., c. 4, s. 18, the marks so made did not avoid the ballots, and that such ballots should now be counted. *Russell* (2), 519.

8. *Semble*, that the County Judge, acting ministerially on the recount of ballots, could not have investigated by whom or for what motive such marks had been made on the ballots. *Ibid.*

9. A voter who had inadvertently torn his ballot, and whose ballot was rejected on the counting of votes, was allowed his vote, the evidence proving that no trick was intended for the purpose of showing how he intended to vote. *South Wentworth*, 531.

10. The Election Act in its enacting part requires ballots to be marked with a cross on any place within the division which contains the name of the candidate. Ballots marked with a straight line within the division, or with a cross on the back, were rejected. *Ibid.*

11. Observations on the difference between the English and Ontario statutes in this respect. *Ibid.*

12. Certain Deputy Returning Officers, before giving out ballot papers to the voters at the election in question, placed numbers on the ballots corresponding with the numbers attached to the names of such voters on the voters' lists. *Held*, (1) that the Deputy Returning Officers had acted contrary to law in numbering the ballots, and that the ballots so numbered should be rejected as tending to the identification of the voters. (2) That such conduct of the Deputy Returning Officers having had the effect of changing the result of the election, a new election was ordered. *East Hastings*, 764.

See also p. 223.

BETS.—*See* pp. 480, 660.

BRIBERY.—*See* CORRUPT PRACTICES (2).

CANDIDATE HIS OWN AGENT.—*See* pp. 211, 660.

CANDIDATE NOT SUPERVISING HIS AGENT.—*See* pp. 52, 560, 568.

CANVASSING.—*See* pp. 97, 187, 214, 245, 304, 343, 387, 420, 547, 660, 785, 803.

CASE NOT IN PARTICULARS.—*See* pp. 21, 163, 243, 252, 420, 489.

CHAMPERTY.—It is not a champertous transaction that an association of persons, with which the petitioner was politically allied, agreed to pay the costs of the petition. Even if the agreement were champertous, that would not be a sufficient reason to stay the proceedings on the petition. *North Simcoe*, 617.

CHARITY.—*See* pp. 214, 547, 576, 751.

COLORABLE APPOINTMENT OF SCRUTINEER.—*See* p. 274.

COMMISSION TO EXAMINE WITNESSES.—A Commission to examine witnesses in a foreign country may be issued in the case of the trial of an election petition. *Cornwall* (3), 803.

CORRUPT PRACTICES.—(1.) **Generally.**—1. The total expenditure proved was $[illegible]0, and the number of voters on the roll was 4,669. *Held*, that the expenditure was not excessive. *East Toronto*, 70.

2. A candidate's appeal to his business, or to his employment of capital in promoting the prosperity of a constituency, if honestly made, is not prohibited by law. *West Peterboro*, 274.

3. One T., who was on the roll as an elector, and had sold his property in June, 1874, before the final revision of the Assessment Roll by the County Judge, was, with the knowledge of the respondent—who was aware a doubt existed as to T.'s right to vote—given an appointment to act as scrutineer at a distant polling place, and also a certificate from the Returning Officer under 38 Vic., c. 3, s. 28, to enable T. to vote at the place where he was to act as such scrutineer, at which place T. voted without taking the voter's oath, and returned without entering upon the duties of scrutineer. On a question of law reserved on the above facts for the Court of Appeal: *Held*, that the act complained of was not a corrupt practice under the statute; but under the circumstances, the Court gave the respondent no costs in appeal. *Ibid.*

4. The intention of the Legislature was, that votes should be given from the conviction in the mind of the voter that the candidate voted for was the best person for the situation, and that the public interests would be best served by electing him; and that the evil to be corrected was supporting a candidate for *causâ lucri*, or personal gain in money or money's worth to the voter. *Halton*, 283.

5. If an act, made a corrupt practice by statute, is done by an agent of a candidate, but not in pursuit of the object of the agency or the interest of the candidate, or in any way in relation to the election, but solely for the purpose, interest, or gratification of the agent, such act, not being done by such agent *qua* agent, is not within the penalties of s. 3 of 36 Vic., c. 2. *Lincoln*, 391.

6. Where corrupt practices by agents, and others in the interest of the respondent, affected less votes than the majority (23) obtained by the respondent at the election: *Held*, under 39 Vic., c. 10, s 37, that such corrupt practices did not extend beyond the votes affected thereby, and did not avoid the election. *Lincoln* (2), 489.

7. Where, in addition to the above corrupt acts, bets were made by agents of the respondent and others, with a number of voters who were supporters of N., the opposing candidate, the effect of the bets being that in order to win the bets, the voters must vote for the respondent. *Held*, that these bets were for the purpose of getting votes for the respondent, and were corrupt practices; and that in connection with the other corrupt acts proved as set out above, they affected the result of the election; and that the election was therefore avoided. *Ibid.*

8. The majority of the respondent was 337; but it appeared in evidence that two agents of the respondent had bribed between forty and fifty voters; that in close proximity to the polls spirituous liquor was sold and given at two taverns during polling hours, and that one of such agents took part in furnishing such liquor; and that such agent had previous to the election furnished drink or other entertainment to a meeting of electors held for the purpose of promoting the election. *Held*, that the result of the election had been affected thereby, and that the election was void. *West Hastings* (2), 539.

9. *Per Moss*, C. J.—*Primâ facie* corrupt practices avoid an election; and the onus of proof that they are not sufficient to affect the majority of the votes rests upon the respondent. *Ibid.*

10. *Semble*, if evidence showed that corrupt practices had been committed by a respondent, it would be the duty of the Court so to adjudicate whether the petitioner was willing to withdraw the charge or not. *South Renfrew*, 556.

11. The definition of "corrupt practices" in sec. 3, and the effect of sec. 20 of the Controverted Elections Act of 1873, as to the report of an Election Judge to the Speaker, considered. *North Victoria*, 584.

12. The first principle of Parliamentary law is that elections must be free; and therefore, without referring to statutory provisions, if treating was carried on to such an extent as to amount to bribery, and undue influence was of a character to affect the election, the election would be void. A single bribed vote brought home to a candidate would throw doubt on his whole majority, and would therefore annul his return. *Ibid.*

13. *Semble*, that the term "wilful," as used in sec. 98, cannot be construed in a narrower sense than the term "corruptly" in sec. 92, sub.-sec. 1; and that the term "corruptly" does not mean wickedly, or immorally, or dishonestly, but doing that which the Legislature plainly meant to forbid;—as an act done by a man knowing that he is doing what is wrong, and doing it with an evil object. *Halton*, 736.

See also DISQUALIFICATION.

—— (2.) Bribery (*a*) Offers of.

1. Where a charge of bribery is only the unaccepted offer of a bribe, the evidence must be more exact than that required to prove a bribe actually given or accepted. *South Grey*, 52.

2. Where the evidence as to bribery consists of offers or proposals to bribe, the evidence should be stronger than with respect to actual bribery. *East Toronto*, 70.

3. Where three voters swore to three separate offers of bribery made to each of them separately by an agent of the respondent, which such agent swore were never made by him: *Held*, that the evidence was not sufficient to justify the setting aside of the election. *Ibid.*

4. The language of Martin, B., in the *Wigan case* (1 O'M. & H. 192), adopted as a general rule applicable to this case. *Ibid.*

5. Where the evidence as to the offer of bribes was contradictory, and the parties making charges of bribery appeared to have borne indifferent characters: *Held*, that the offer of bribes was not satisfactorily established. *Welland* (2), 187.

6. Where one party affirmed and the other party denied a corrupt offer between them as to voting for the respondent: *Held*, that the offer was not sufficiently proved. *Dundas*, 205.

7. A promise by an agent of the respondent when canvassing a voter, that he "would see him another time and things would be made right," is not an offer of bribery. *North Victoria*, 252.

8 Where, in evidence of offers of bribery, an assertion on one side is met by a contradiction on the other, the uncorroborated assertion is not sufficient to sustain the charge. *West Peterboro*, 274.

9. A charge of bribery against the respondent, where the evidence was unsatisfactory and repugnant in itself, and rested more on suspicion than on clear positive proof, was held not proven. *North Ontario*, 304.

10. One S., an alleged agent of the respondent, made offers of sheepskins to two voters as to their votes at the election, but he swore the offers were made in jest; but as the evidence did not show that S. was an agent of the respondent at the time of the alleged offers, no effect was given to the charge. *North Middlesex*, 376.

11. A statement that an offer to bribe was made in jest should be received with great suspicion. A briber may make an offer which he intends should be taken seriously, and then, if not accepted, he may assert it was made in jest. *Ibid.*

12. On a charge that one O. bribed a voter by promising to procure a deed of his land for him if he would procure votes for the respondent, the evidence showed that though the voter had so represented, the procuring of the deed had nothing to do with the election. *Ibid.*

13. A promise to work for a voter, made without reference to the election and as a joke, not evidence of bribery. *Halton*, 736.

14. A charge that the respondent promised to give a voter certain work to do if he voted for him, was disproved by the evidence of the

respondent and another, and by the admissions of the voter made to other parties. *Ibid.*

15. The evidence in support of the offer of a present, or something nice, to the wife of a voter to induce the voter to refrain from voting, showing that it had reference to a different election than the one in question, an amendment of the particulars was refused, and the charge dismissed. *Ibid.*

16. The charge against the respondent and one B., of an offer of money to, and to procure an appointment as Justice of the Peace for, a voter in consideration of his voting for the respondent, was supported by the evidence of the voter, who showed bitter hostility to B.; but the charge was denied by the respondent. And the evidence showing the statement to be improbable, and that the election contest was carried on by the respondent with a scrupulous and honest endeavor to avoid any violation of the law against corrupt practices, the charge was dismissed. *Ibid.*

17. A charge against an agent of the respondent, that he had promised to procure the office of police magistrate for one W., was denied by the agent and the respondent; and it further appearing that W. had acted on the committee, and voted, for the opposing candidate, the charge was dismissed. *South Ontario*, 751.

18. Charges against the respondent, that he had promised an office to the son of a voter, and a contract to the voter himself, were contradicted by other evidence, and dismissed. *Ibid.*

19. The respondent canvassed a voter, who at the trial swore that after he had agreed to vote for him, the respondent promised to give the voter some work; the respondent denied the promise. *Held*, although the voter appeared to be a truthful witness, and was not shaken on cross-examination, that the promise of employment was not made out beyond all reasonable doubt. *North Ontario*, 785.

See pp. 154, 376, 458, 612, 710.

—— (2.) **Bribery** (*b*) **Acts cf.**—1. The petitioners having given evidence of corrupt practices: *Held*, (1) That the election was void for bribery by agents. (2) That corrupt practices extensively prevailed at this election. *Prescott*, 1.

2. *Quære*, whether the Judge presiding at the trial should not direct notice to be given to the parties who, from the evidence, were apparently guilty of corrupt practices, so that the Judge might decide upon their liability to disqualification, and report them under the statute. *Ibid.*

3. The respondent, after announcing himself as a candidate, gave $10 in two $5 bills to a child of a voter, then three or four years old, which had been named after him. He had two years previously intimated that he would make the child a present. *Held*, that the gift, under such circumstances, was not bribery. *Glengarry*, 8.

4. The plain and reasonable meaning of the statute is, that when the prohibited things are done in order to induce another to procure, or to endeavor to procure, the return of any person to serve in Parliament, or the vote of any voter at any election, the person so doing is guilty of bribery. *East Toronto*, 70.

5. Where a candidate in good faith intended his election should be conducted legally, and had printed and circulated throughout the constituency a synopsis of the new law as to corrupt practices, and had caused an editorial article to be printed in a newspaper, and had taken trouble to have the law explained to the electors. *Held*, that although many of the acts done during the election created doubt and hesitation in the mind of the Judge, yet as the return of a member ought not to be lightly set aside, the Judge ought to be satisfied that the acts done were done to influence the electors and so done corruptly, and this election was upheld. *West Toronto*, 97.

6. Where in ordinary cases there is evidence to go to a jury, but on which the Judge, if sitting as a juror, would find for the defendant;

in similar cases in election trials he ought to find against the charge of bribery. *Ibid.*

7. Where money was paid to voters for services agreed to be rendered, but such services were not rendered owing to the misconduct of the voters, such payment was not bribery. *Ibid.*

8. A voter who had a claim of $3 from a former election of respondent, when canvassed to vote said he did not think he should vote, evidently putting forth the $3 that was due to him as a grievance. The clerk of an agent of the respondent promised to pay it to him, and he voted, and the money was paid after the election, and charged by the clerk in the agent's accounts as "paid J. Landy $3," but without the knowledge of such agent. Another agent of the respondent, M., who was treasurer of the ward, and was aware of the claim, and had told the voter it would be made right, paid the first agent's account, but did not then take particular notice of the payment, and it was not explained to him. The clerk had been requested by his employer (the agent first mentioned) to canvass a particular voter, but was not employed as a canvasser generally by any one. *Held*, (1) That such clerk was not an agent or sub-agent of the respondent. (2) That the payment of the account by the agent M. was not, under the circumstances, a ratification by him after the act, so as to affect the election. *Ibid.*

9. An elector, when asked to vote for respondent, said that it would be a day lost if he went to vote, which would cost him $1. To which the canvasser replied, "Come out, and your $1 will be all right." *Held*, not sufficient to establish a charge of bribery. *Monck*, 4.

10. A voter who had been frequently fined for drunkenness was canvassed by C. to vote for the respondent, and was asked by him "how much of that money" (paid in fines) "he would take back and leave town until the election was over." Counsel for the respondent then admitted that C. was an agent of the respondent, and that the evidence was sufficient to avoid the election. *Cornwall*, 203.

11. The respondent had in 1873 compromised with his creditors for 50 cents in the $1, and then promised to pay all his creditors in full. About the time of the election he paid one S., who had at the two previous elections supported the opposing candidate, a portion of the promised amount. *Held*, under the circumstances, the payment was not bribery. *Dundas*, 205.

12. Where half a cord of wood was given to a voter in poor circumstances, during the election, and the giver swore that it was given out of charity; and where a voter was bailed out of jail on the day of polling by a friend, but, according to the evidence, without reference to the election. *Held*, not acts of bribery. *London*, 214.

13. K., an agent for Ward No. 2, while canvassing a voter in Ward No. 6, gave him money to get beer, for which the voter paid a lesser sum, and as the voter was poor, told him to keep the change. *Held*, under the circumstances, not an act of bribery. *Ibid.*

14. The evidence respecting a charge of bribery, by payment of a disputed debt, was held insufficient to sustain the charge. *North Victoria*, 252.

15. An agent of the respondent, while canvassing a voter, gave $8 to the widowed sister of the voter, an old friend of his, who was then in reduced circumstances. The agent stated that this was not the first money so given, and that it was in no way connected with the election. *Held*, under the circumstances, not an act of bribery. *Ibid.*

16. One M., the financial agent of the petitioner, agreed with a voter, who had a difference with the petitioner about a right to cut timber on the voter's land, to settle the matter—the voter, when canvassed to vote for the petitioner, referring to this difference. M. signed an agreement in the petitioner's name, whereby he surrendered any claim to cut timber except as therein mentioned. *Held*, (1) That a surrender of the right to cut timber on the

lands of another was a "valuable consideration," within the meaning of the bribery clauses of 32 Vic., c. 21. (2) That the agent M. was guilty of an act of bribery. *Ibid.*

17. *Quære*, whether the word "employment" used in the bribery clauses of the Act refers to an indefinite hiring, or would include a mere casual hiring. *West Peterboro*, 274.

18. One H., a voter, held a claim against the respondent, and M., his agent, and another, for five years, which he had been endeavoring to procure payment of. When canvassed at the time of the election, he stated that if he did not get it settled he would not vote for the respondent. M. induced the respondent to give his promissory note to H. for the debt, but did not give the respondent to understand, directly or indirectly, that the note had anything to do with the election. *Held*, (1) That it is always open to inquire, under statutes similar to the Election Acts, whether the debt was paid in accordance with the legal obligation to pay it, or in order to induce the voter to vote or refrain from voting. (2) (Affirming *Wilson*, J.,) That on the evidence, the motive which induced M. was that of procuring the voter H. to vote at the election, and that thereby an act of bribery was committed by M. as such agent. *North Ontario*, 304.

19. Bribery is not confined to the actual giving of money. Where a grossly inadequate price has been paid for work or for an article, it is clearly bribery. *Cornwall*, 547.

20. A large sum of money, averaging $3 per head, had been spent by two of the agents of the respondent, and money had been given by them to parties without any instructions. *Held*, that where such money had been applied improperly, it must be considered that it was intended to be so applied. *Ibid.*

21. One L., a tavern-keeper, was told by H., one of the respondent's canvassers, that he thought L. could get $18 or $20 from P., if he would stay at home during the election. L. expected that the money would be spent at his tavern, and showed that he did not know what was intended. Neither H. nor P. were examined. *Held*, on the evidence, there was no actual offer to bribe. *North Victoria*, 612.

22. The avoidance of an election for an act of bribery committed by the agent of a candidate is a civil proceeding, and is not brought about to punish the candidate, but to secure an unbiassed election. *Kingston*, 625.

23. Money was given to certain voters to make bets with others on the result of the election, but as there was no evidence of a previous understanding as to the votes, such bets were not bribery. The practice of making bets on an election condemned as being like a device to commit bribery. *South Norfolk*, 660.

24. One P., some years before the election, claimed that the respondent was indebted to him, but the respondent denied all liability, and the dispute caused a coolness between them. One H., four months before the election, was employed by P. to collect another account from the respondent, and did so. H. stated to P. that as the respondent was in a good humor, it would be a good opportunity to get the old account settled, and asked P. if he would support the respondent in case the old account was settled. P. replied that he might promise what he liked. H. then took the account to the respondent, who looked it over and gave his note for it. H. and the respondent never referred to the election, nor to the settlement, as affecting the election. *Held*, that the respondent had not been guilty of bribery in this transaction. *South Ontario*, 751.

25. *Semble*, that s. 92 of the Dominion Elections Act, 1874, points to cases where money, or valuable consideration, is given to a voter, and not to a community generally. *Ibid.*

26. The respondent owed one M. a debt, which had been due for some time. He was sued for it about the time of the election, and was informed that his opponents were using the non-payment of it against him in the election. The respondent stated he would not pay it until

after the election, as it might affect his election. *Held*, that the promise to pay the debt was not made to procure votes, but to silence the hostile criticism, and was not therefore bribery. *North Ontario*, 785.

27. *Per Armour*, J., that the hiring of orators and canvassers at an election is bribery. *Ibid.*

28. An agent of the respondent C. employed one W. to go with him on the evening before the election to several electors, from whom both C. and W. made colorable purchases, but with the corrupt intention of inducing the persons from whom the purchases were made to vote or refrain from voting at the election. *Held*, that C. and W. were guilty of bribery, and that the election was avoided in consequence of their corrupt acts. *Cornwall* (3), 803.

—— (3.) **Treating** (*a*) **Generally.**—1. Where a charge of a corrupt intent in treating is made, the evidence must satisfy the Judge, beyond reasonable doubt, that the treating was intended directly to influence the election, and to produce an effect upon the electors, and was so done with a corrupt intent. *Glengarry*, 8.

2. Treating, when done in compliance with a custom prevalent in the country and without any corrupt intent, will not avoid an election. *Welland*, 47.

3. Where the object of an agent in treating is to gain popularity for himself, and not with any view of advancing the interest of his employer, such treating is not bribery. *East Toronto*, 70.

4. That the furnishing of refreshment to voters by an agent of a candidate, without the knowledge or consent of the candidate and against his will, will not be sufficient ground to set aside an election, unless done corruptly or with intent to influence voters. *Ibid.*

5. *Quære*, whether the Treating Act, 7 William III., c. 4, is in force in this Province. *Dundas*, 205.

6. Treating is not *per se* a corrupt act, except when so made by statute; but the intent of the party treating may make it so, and the intent must be judged by all the circumstances by which it is attended. *North Middlesex*, 376.

7. *Semble*, when it is done by a candidate in order to make for himself a reputation for good fellowship and hospitality, and thereby to influence electors to vote for him, it is a species of bribery, which would avoid his election at common law. *Ibid.*

8. When the respondent who, in the course of his business as a drover, had been in the habit of treating at taverns, treated during his canvass, but to a less extent than was his habit, and not apparently for the purpose of ingratiating himself with the electors. *Held*, under the circumstances, that such treating was not corrupt, and his election was not avoided. *Ibid.*

9. The general practice which prevails here of persons drinking in a friendly way when they meet, would require strong evidence of a profuse expenditure of money in drinking, to induce a Judge to say it was corruptly done, so as to make it bribery or treating at common law. *Kingston*, 625.

10. Treating at an election, in order to be criminal, must be done corruptly, and for the purpose of corruptly influencing the voter. *South Norfolk*, 660.

11. The giving of free dinners to a number of electors who had come a long distance in severe winter weather, in the absence of evidence that it was done for the purpose of influencing the election either by voting or not voting, or because such electors voted, was not a corrupt act. *North Victoria* (2), 671.

12. One D., who had been a candidate for various offices for twenty years prior to the election in question, and had freely employed treating as an element in his canvassing, became an agent of the respondent, and treated extensively, as was his common practice, during the election. The respondent was aware of D.'s practices, and once, in the early part of the canvass, cautioned D. as to his treating, but never repudiated him as his agent. *Held*,

on the evidence, that as D. did no more in the way of treating during the election than he had done on former occasions, and had employed treating as he ordinarily did as his argument, and had not used it as a means of corruptly influencing the electors, he was not guilty of a corrupt practice. *East Elgin*, 769.

13. *Semble*, the treating proved in this case, if practised by one not theretofore given to such practice, would have been sufficient to have avoided the election. *Ibid.*

14. Observations on the law as it now stands, as holding out inducements to candidates to employ men who are habitual drinkers to canvass by systematic treating and thus cause electioneering to depend upon popularity aroused by treating, rather than by the merits of the candidates, or the measures they advocate. *Ibid.*

—— (3.) **Treating** (*b*) **Meetings of Electors.**—1. The respondent, who was then representing the county in the Legislature, on two several occasions at the close of public meetings of electors called by him to explain his conduct as such member, treated all present to liquor at taverns. He had not at the time made up his mind to be a candidate at the then coming election, but told the electors that "if they gave him their support he would expect it." *Held*, under the circumstances, that such treating was not done with a corrupt intent. *Glengarry*, 8.

2. *Quære*, whether such treating was in any case a corrupt practice, under sec. 61, of 32 Vic., cap. 21, or other than an illegal act which subjected the party to a penalty of $100 under sec. 65—the statute pointedly omitting all mention of treating. *Ibid.*

3. Reasonable refreshments furnished *bona fide* to committees promoting the election are not illegal. *South Grey*, 52.

4. About an hour after a meeting of a few friends of the respondent at a tavern, one of their number was sent some distance to buy oysters for their own refreshment, of which the parties and others partook. The following day a friend of the respondent treated at a tavern, and not having change, the respondent gave him 25 cents to pay for the treat. *Held*, not to be corrupt treating, nor a violation of 36 Vic., c. 2, s. 2. *Welland* (2), 187.

5. The respondent, who was a member of a temperance organization, held an election meeting in a locality within the electoral division, and about an hour after the meeting had dispersed, went to a tavern where he met about 10 or 15 persons in the bar-room, to whom he made the remark, "Boys, will you have something?" Nothing was then taken; but one E., a supporter of the respondent, said he would treat, and he did treat the persons present, and the respondent gave him the money to pay for the treat. *Held*, (1) That as the meeting for promoting the election had dispersed an hour before the respondent went to the tavern, this was not a meeting of electors. (2) That the treating not having been done with a corrupt intent, was not an offence under 32 Vic., c. 21, s. 61, as amended by 36 Vic., c. 2, s. 2, nor at common law. *Dundas*, 205.

6. One F., an agent of the respondent, on the day of the nomination of candidates to contest the election, and while the speaking was going on, treated a large number of persons at a tavern across the street from the place of the nomination, for which he paid $7 or $8. *Held*, a corrupt practice by an agent of the respondent, which avoided the election. *Ibid.*

7. The treating of persons by a candidate at a tavern during his canvass is not a treating of electors with corrupt motives. *London*, 214.

8. Where a member of the respondent's committee, on the day of election, invited some of his friends to his house, which was opposite the polling booth, and gave them beer, &c., during or soon after polling hours. *Held*, not a contravention of 32 Vic., c. 21, s. 66. *Ibid.*

9. One F., an agent of the respondent, brought a jar of whiskey to a meeting of electors assembled for the purpose of promoting the

election, and gave drinks from the same to the electors present. This was held a corrupt practice, and a violation of the Election Law of 1868, as amended by the Election Act of 1873, and that the election was avoided thereby. *West Wellington*, 231.

10. A meeting of the electors was held in a town hall, and C. and a number of electors went from the meeting to a tavern, where they were treated by C., an agent of respondent. *Held*, (1) That this was a meeting of electors assembled for the purpose of promoting the election; and (2) that the treating by C. was a corrupt practice. *East Peterboro*, 245.

11. After a meeting of electors in a town hall, some friends of the respondent remained together consulting about the election, and afterwards went to a tavern, where some of them boarded, and had an oyster supper. *Held*, that the evidence was not sufficient to sustain the charge that this was entertainment furnished to a meeting of electors. *North Victoria*, 252.

12. A charge of treating a meeting of electors by an alleged agent of the petitioner was not sustained, owing to the alleged agency not having been satisfactorily proved. *Ibid.*

13. Refreshments provided at a meeting of electors, all of one political party, or at a meeting of a committee to aid in returning a candidate, by and at the expense of one or more of their number, unless in some extreme case, cannot be deemed a breach of the provisions of the statute against treating. *Halton*, 283.

14. A meeting of the electors was held at a tavern, at which both candidates were present. A dispute arose, and the meeting broke up and the parties left the room as a disorderly crowd, and began pulling off their coats and talked of fighting. A treat was proposed to quiet the people, and one F. (held by *Wilson*, J., to be an agent of the respondent) treated, and the crowd quieted down and dwindled away. *Held* (*per Wilson*, J.), that the treating, under the circumstances, was not furnishing drink to a meeting of electors assembled for the purpose of promoting the election. *North Ontario*, 304.

15. On appeal, the Court, without expressing any opinion as to the treating, held, on the evidence, that F. was not an agent of the respondent at the time of the alleged treating. *Ibid.*

16. One W., a member of a political association, held to be agents of the respondent, treated the members of the association present at a meeting in a tavern. *Held*, that the members so present were electors assembled to promote the election of the respondent within s. 61 of the Election Law of 1868, and that such treating was a corrupt practice by W. *North Grey*, 362.

17. After the nomination of candidates on the nomination day, and on another occasion, after a "meeting assembled for the purpose of promoting the election," and after the business for which the electors had assembled was over, the electors left the building in which the meeting was held and dispersed to various taverns, at which their vehicles had been put up, and then before leaving for home treated each other; and at one of the taverns the respondent himself partook of a treat. *Held*, (1) Not furnishing drink or other entertainment to meetings of electors within s. 61 of the Election Law of 1868. (2) That the meeting of electors for the nomination of candidates, is a "meeting assembled for the purpose of promoting the election." *North Middlesex*, 376.

—— (3.) **Treating (c) on Polling Day.**—1. The distribution of spirituous liquor on the polling day, with the object of promoting the election of a candidate, will make his election void. *South Grey*, 52.

2. Upon questions reserved by the Rota Judge under "The Controverted Elections Act of 1871," it appeared that H. and B. voted for respondent. H. kept a saloon, which was closed on the polling day; but upstairs, in his private residence, he gave beer and whiskey without

charge to several of his friends, among whom were friends of both candidates. B., who had no license to sell liquor, sold it at a place near one of the polls to all persons indifferently. This was not done by H. or B. in the interest of either candidate, or to influence the election, B. acting simply for the purpose of gain; and the candidate did not know of or sanction their proceedings. *Held* (though with some doubt as to B.), that neither H. nor B. had committed any corrupt practice within sec. 47 of 34 Vic., cap. 3, and therefore had not forfeited their votes; for they had not been guilty of bribery or undue influence, and their acts, if illegal and prohibited, were not done "in reference to" the election, which, under sec. 47 of 34 Vic., cap. 3, is requisite in order to avoid a vote. *Brockville*, 139.

3. On the day of the election in question, and during polling hours, one M., an agent of the respondent, was offered by a person unknown to him spirituous liquor (whiskey) in a bottle, which such agent, after remonstrating with such person, accepted and drank at the polling place where such agent then was. The unknown person also gave spirituous liquor from the same bottle to other persons then present. *Held*, that as the Legislature had, by the provisions as to the selling or giving of liquor during the hours of polling, provided for the punishment of one particular class, which was defined to be the seller or giver, it did not intend to include the other class, the purchaser or receiver, to which no reference was made, except inferentially; and that therefore such agent, as the receiver of spirituous liquor during such polling hours, was not guilty of a corrupt practice. *West Toronto*, 179.

4. One F., a tavern-keeper, was given $5 by the respondent, and requested to appoint a scrutineer to act for the respondent at the poll on polling day. F. kept his tavern open on polling day, and various persons treated there during polling hours. Counsel for the respondent, after evidence of the above facts, admitted that F. was an agent of the respondent, and that his acts were sufficient to avoid the election. *Held*, that although the Court did not adjudicate that the respondent, by giving the $5 and requesting F. to appoint a scrutineer, had constituted him an agent for all purposes, it was the practice of the Court to take the admission of counsel in place of proof of agency, and therefore the admission of counsel as to F.'s agency was sufficient. *Held* further, that F., as such agent, had been guilty of a corrupt practice in keeping his tavern open on polling day, and that such corrupt practice avoided the election. *Russell*, 199.

5. On the day of the election, and during the hours of polling, one W., an agent of the respondent, was offered a treat in a tavern within one of the polling divisions, of which such agent and others then partook. *Held*, that giving a treat in a tavern during polling hours was a corrupt practice, and being an act participated in by an agent of the respondent, the election was avoided. *South Essex*, 235.

6. One B. was appointed, in writing, by the respondent to act as his agent for polling day. During the day he went to a tavern and asked for and was given a glass of beer. *Held*, that B. treated himself, and neither gave nor sold, and was not therefore guilty of a corrupt practice. *East Peterboro*, 245.

7. Where evidence of an act of keeping open his tavern on polling day, and selling liquor therein as usual, by P., an agent of the petitioner, came out on cross-examination, and during the argument the evidence was objected to because the charge was not in the particulars, the case was not considered. *North Victoria*, 252.

8. One M., an agent of the respondent, treated at a tavern during polling hours on polling day. The evidence was, that decanters were put down, and people helped themselves, but there was no evidence that spirituous liquors were used. The evidence was objected to at the time, as the charge was not mentioned in the particulars, but admitted subject to the objec-

tion. *Held*, (1) That the nature of the treat in the bar-room of a country tavern raised the presumption that the treat was of spirituous liquors, and was a corrupt practice, which avoided the election. (2) That had an application been made to add a particular embracing the charge, it would have been granted. *Ibid.*

9. *Semble*, *per Gwynne*, J., that as to the seller or giver of treat on polling day, the only person liable to the penalty of $100 would be the tavern-keeper, as the statute does not authorize two penalties for the same act. *North Grey*, 362.

10. One L., an alleged agent of the respondent, went into the tavern of one D. during polling hours on polling day, and purchased spirituous liquor, with which he treated himself and several persons there present. *Held*, *per Gwynne*, J., that the penalties provided by s. 66 of the Election Law of 1868 apply only to the tavern-keeper, who as such is able to control what is done on his own premises in violation of the Act, and that the treating by L. was not a corrupt practice. *Per Draper*, C. J. A.—(1) That section 66 of the Election Law of 1868 must be construed distributively. (2) That under the first part of the section the tavern-keeper is the only person who can incur the penalty, for not keeping his tavern closed during the prescribed time. (3) That under the second part of the section, the persons who incur the penalty are (*a*) the tavern-keeper who sells liquor in violation of the statute, and (*b*) the purchaser who gives the liquor purchased by him to persons in the tavern. *Lincoln*, 391.

11. One C., a member of the respondent's committee at W., partook of whiskey in the kitchen of a tavern at W. during polling hours, and also, when bringing a voter from the town of O. to the town of W. (within the same electoral division) to vote at W., treated himself and the voter in O. *Held*, by the Court of Appeal (*Draper*, C. J. A., *dissentiente*), that C. was not guilty of corrupt practices within s. 66 of the Election Law of 1868. *South Ontario*, 420.

12. *Held*, further, that s. 66 of the Election Law of 1868 (32 Vic., c. 21), as amended by 36 Vic., c. 2, applies only to shop, hotel and tavern-keepers, who alone are liable to the penalties for keeping open the tavern, etc., and for selling or giving spirituous liquors during the prohibited hours. *Ibid.*

13. *Held*, by the Court of Appeal (reversing *Wilson*, J.), that the prohibition in such section (66) as to opening taverns and giving or selling liquor "in the municipalities in which the polls are held," applies to all the municipalities within the constituency, irrespective of the place where the vote is given or to be given. *Ibid.*

14. The respondent, on polling day and during polling hours, went to a tavern at W. and partook therein of spirituous or fermented liquor, for which he did not then pay. *Held*, *per Wilson*, J., that he did not "sell or give" spirituous liquors within the meaning of s. 66 of the Election Law of 1868. *Ibid.*

15. By the 3rd sec. of 39 Vic., cap. 10, which is substituted for the 66th sec. of the Election Law of 1868, tavern-keepers, or persons acting in that capacity for the time, who sell or give liquor at taverns on polling day and within the hours of polling, are guilty of corrupt practices; but persons who treat or are treated at such taverns are not affected by the statute.—*Ford's vote. Lincoln* (2), 500.

16. Certain voters met at a tavern on polling day, and one B. said he did not know how to mark his ballot. One of the voters, after showing B. how to mark his ballot, according to the candidate he desired to vote for, treated. *Held*, that the treating was not a violation of s. 94 of the Dominion Elections Act, 1874, nor a corrupt practice under s. 98 of the Act. *North Ontario*, 785.

17. One M. canvassed a voter on polling day, and urged him to vote for the respondent, and, while

canvassing, treated the voter four times; the voter then went and voted. *Held*, that the treating was for the purpose of corruptly influencing the voter to vote or refrain from voting at the election. *Ibid.*

18. A scrutineer for the respondent had some whiskey with him on polling day, and treated the Deputy Returning Officer, Poll Clerk, and another in the polling station. *Held*, not a corrupt practice. *Ibid.*

—— (4.) **Undue Influence.**—1. The respondent was charged with intimidating Government servants during his speech at the nomination of candidates, by threatening to procure the removal of all Government servants who should not vote for him, or who should vote against him. The evidence showed that, though in the heat of debate, and when irritated by one U., he used strong language, there was no foundation for the corrupt charge: and as it should not have been made, the costs in respect of the same were given to the respondent against the petitioner. *Welland*, 187.

2. One B. claimed the right to vote in respect of his wife's property, and was told by W., an agent of the respondent, that he could not vote unless he could swear the property was his own. The voter's oath was read to him, and the agent repeated his statement, and said he would look after the voter if he took the oath. The voter appeared to be doubtful of his right to vote, and withdrew. *Held*, that W. was not guilty of undue influence.

3. *Quære*, Whether the act of the agent as above set out was undue influence under 32 Vic., c. 21, s. 72. *Halton*, 283.

4. One W., a voter, who was in arrears to the Crown for the purchase money of a lot of land, was canvassed by B., an alleged agent of the respondent, who told him that the Government would look sharply after those in arrears for their land who did not vote for the supporters of the Government. *Held* (reversing *Wilson*, J.), that what occurred was a *brutum fulmen*, or an expression of opinion upon a subject on which every one was competent to form an opinion. *North Ontario*, 304.

5. Shortly before polling day the respondent's agents issued a cirular, the substance of which was that they had ascertained upon undoubted authority that W., an independent candidate, despairing of election himself, was procuring his friends to vote for C., the opposition candidate. W. denied the truth of this report. *Held*, that this was not a "fraudulent device," within the meaning of sec. 72 of 32 Vic., cap. 21, to interfere with the free exercise of the franchise of voters. *East Northumberland*, 387.

6. The respondent, at a public meeting, claimed that, whether elected or not, he would have the patronage of the constituency in reference to appropriations and appointments. *Held* (reversing *Wilson*, J.), that the respondent was not guilty of undue influence as defined by s. 72 of the Election Law of 1868, nor as recognized by the common law of the Parliament of England. *Muskoka*, 458.

7. To sustain a general charge of undue influence, it would be necessary to prove that the intimidation was so general and extensive in its operations that the freedom of election had ceased in consequence. *Ibid.*

8. Two agents of the respondent gave a voter, M., some whiskey on polling day, and took him in a boat to an island, where they stayed for some time. One of the agents then left, and the other sent M. to another part of the island for their coats. During M.'s absence the latter agent left the island with the boat, but M. got back in time to vote, being sent for by the opposite party. *Held*, that the two agents were guilty of undue influence. *North Ontario*, 785.

—— (5.) **Hiring Teams to Convey Voters to the Poll.**—1. On the admission of the respondent's counsel the election was avoided, on the ground that agents of the respondent had, during the election, hired

and paid for teams to convey voters to the polls. *Prince Edward*, 45.

2. The hiring by an agent of the respondent of a railway train to convey voters to and from places along the line of railway where they could vote, was a payment of the travelling expenses of voters in going to and from the election, within the meaning of sec. 71 of 32 Vic., c. 21. and was a corrupt practice, and avoided the election. *North Simcoe*, 50.

3. The payment of a voter's expenses in going to the poll is illegal, as such, and a corrupt practice, even though the payment may not have been intended as a bribe. *South Grey*, 52.

4. Cabs and carriages were hired for the use of committee-men and canvassers during the election and on the day of polling, with instructions to the drivers that they were not to convey voters to and from the poll. One cab was however used for that purpose for the greater part of the day, but without the assent of the agent of the respondent, who had charge of the cab. *Held*, that as the evidence did not show that the cabs and carriages were colorably hired for the purpose of bribery or conveying voters to the poll, or that one cab was so used with the assent of the agent of respondent, the hiring was not an illegal act within s. 71 of 32 Vic., c. 21. *West Toronto*, 97.

5. One M., a carter, who voted for respondent, at the request of P., the respondent's agent, carried a voter five or six miles to the polling place, saying that he would do so without charge. Some days after the election, P., the agent, gave M. $2, intending it as compensation for the conveyance of such voter to the poll, but M. thought it was in payment for work which he had done for P. as a carter. The candidate knew nothing of the matter. *Held*, that there was properly no payment by P. to M. for any purpose, the money being given for one purpose and received for another; but that if there had been, it was made after P.'s agency had ceased, and there was no previous hiring or promise to pay, to which it could relate back. *Brockville*, 139.

6. If such payment had been established as a corrupt practice, it would have avoided P.'s vote, but not M.'s; and it would not have defeated the election, for it was not found to have been committed with the knowledge or consent of the candidate, but the contrary. *Ibid.*

7. On polling day, one W. asked two voters to go with him and vote for the respondent, and he would bring them back, and they could feed their horses and have dinner. W. sent one of his horses on some business of his own, and hired from one of the voters a horse, for which W. paid him 50c., and then drove with the two voters to the poll. *Held*, not a hiring of a horse, etc., to carry voters to the poll within s. 71, nor a furnishing of entertainment to induce voters to vote for the respondent, within s. 61 of the Election Law of 1868. *North Victoria*, 252.

8. The Court declined, in the state of the law prior to the Dom. Election Act, 1874, to exclude inquiry as to the payment of travelling expenses of persons going to and returning from the poll, inasmuch as such payment might amount to bribery. *North Victoria*, 584.

9. Where the amounts paid for hiring teams were fair and reasonable, such hiring was not bribery under the Dom. Con. Election Act, 1873. *North Victoria*, 612.

10. Where a canvasser for the respondent received money for hiring teams, and hired from those indebted to him, and agreed with them to give them credit for the respective amounts to be paid for the teams, such an arrangement was not evidence of corrupt practices. *Ibid.*

11. Money given to a person to hire a team, and to go round canvassing, held, on the evidence, not bribery. *Ibid.*

12. One L., a voter, hired a horse and cutter on the day of the election, and with M., a scrutineer for the respondent, drove to the poll and voted. The day after the polling L. and M. returned to their

homes, and on the way M. gave L. $4 to pay for the horse and cutter. *Held*, (1) that the payment of $4 having been made after the election, and not having been made corruptly to influence the voter to vote for the respondent, was not a corrupt practice or a wilful violation of sec. 96 of 37 Vic., cap. 9. (2) That M.'s agency was a limited one, and had ceased before the payment in question. *Halton*, 736.

COSTS.—1. The petition was dismissed, but owing to the unwise and imprudent acts of the respondent, he was allowed only one-half of the taxable costs. *Glengarry*, 8.

2. Where bribery by an agent is proved, costs follow the event, even though personal charges made against the respondent have not been proved, and there having been no additional expense occasioned to the respondent by such personal charges. *South Grey*, 52.

3. There being no grounds for charging the respondent personally with corrupt practices, and the scrutiny having been abandoned, the costs of those parts of the case were ordered to be paid by the petitioner. But with respect to the other costs, though the respondent was successful, the matters were proper to be inquired into in the public interest, and each party was left to pay his own costs. *East Toronto*, 70.

4. The election was sustained, but it being in the public interest that the matters brought forward should have been inquired into, and as the respondent had not exercised supervision over the expenditures in connection with the election, the petition was dismissed without costs. *West Toronto* 97.

5. The petitioners were ordered to pay the costs of the respondent up to the meeting of the Election Court, and the costs of the special case; but as to the costs of the trial, each party was ordered to pay his own costs. *Monck*, 154.

6. The petitioner, after a special case had been reserved, appeared before the Judge trying the election petition, and consented to the abandonment of the special case and the dismissal of the petition with costs, and it was so ordered. *West York*, 156.

7. The respondent was ordered to pay the costs of the petition and trial, except the costs of issues found in his favor, part of which costs was to be paid by the petitioner to respondent, and part was to be borne by each of the parties. *Welland*, 187.

8. The costs of investigating charges of bribery against the respondent's election agent, though not established, were awarded against the respondent, owing to the equivocal conduct of his agent in the matters which led to the charges; also the costs of other charges of bribery which were not established, and the costs of proving that several tavern keepers, for their own profit, had violated sec. 66 of the Election Law of 1868, as the witnesses who gave evidence of these matters also gave evidence of other matters, as to which it was reasonable they should have been subpœnaed. *West Wellington*, 231.

9. The petitioner was declared entitled to the general costs of the inquiry, and the costs of the evidence incurred in proof of the facts upon which the election was avoided; but the costs incurred in respect of charges which the petitioner failed to prove were disallowed. *South Essex*, 235.

10. That as the petition had been rendered necessary by the mistakes of the Deputy Returning Officers, for which neither the petitioner nor respondent was responsible, each party should bear his own costs. *Russell* (2), 519.

11. During the progress of a scrutiny of votes, certain ballot papers, counterfoils and a voters' list were stolen from the court, which had the effect of rendering the proceedings in the scrutiny useless; and in disposing of the costs, the Court ordered the respondent to pay the costs up to the date the election was avoided, but that, under the circumstances of certain ballot papers having been stolen which rendered the scrutiny useless,

each party must bear his own costs of the scrutiny. *Lincoln* (2), 489.

12. Various acts of bribery and of colorable charity having been proved against the agents and sub-agents of the respondent, the election was set aside, with costs, including the costs of the evidence on the personal charges against the respondent. *Cornwall*, 547.

13. The respondent sought to establish, on an inquiry under a preliminary objection, that the petitioner (the opposing candidate) had been guilty of bribery, and was therefore disqualified as such. The inquiry was not concluded, as during its pendency the English Election Courts held that bribery would not disqualify a petitioner; but so far as the evidence went, while it disclosed such a large expenditure of money by the petitioner and his agents as to lead to the suspicion it was not all expended for the legitimate purposes of the election, it did not show bribery by the petitioner. The respondent then consented to his election being avoided on the ground of bribery by one of his agents without his knowledge or consent. *Held*, that the general rule as to costs should prevail, and that the respondent should pay the costs of the inquiry as well as the general costs of the cause. *South Renfrew*, 556.

14. The petitioners, after a notice from the respondent admitting bribery by one of his agents, examined witnesses on the personal charges, which were not proved, and in determining the question of costs, it was *held*, that as the petitioners might have come to court on the notice served by the respondent, and have asked to have the election set aside, and as they had attempted, but had failed, to establish the personal charges, the respondent should only pay such costs as he would have had to pay had the petitioners accepted the notice served upon them before the trial. *West Northumberland*, 562.

15. The election was set aside with costs, except as to the costs of certain charges which were unwarranted. A party, though successful, is not entitled to the costs of all the witnesses he may subpœna, nor is the fact of their being called or not called the test of such costs being taxable. *Niagara*, 568.

16. The particulars not having been properly prepared, the petitioner, while obtaining the costs of the proceedings, was disallowed the costs of the particulars. *East Northumberland*, 577.

17. The petitioner having been warranted in continuing the inquiry as to the personal complicity of the respondent with the illegal acts of his agents, was held entitled to the full costs of the trial. *Kingston*, 625.

18. The petitioner was held entitled to the general costs of the petition, except as to the cases of the voters whose names were not on the voters' lists, and as to the scrutiny of ballots. *North Victoria* (2), 671.

19. The Returning Officer having acted fairly in rejecting the nomination paper in this case, each party to the petition was left to bear his own costs. *South Renfrew* (2), 705.

20. The petitioner was held entitled to the costs of the charges on which he succeeded, and the respondent to the costs of the charges on which the petitioner failed. *North Renfrew*, 710.

21. The petition was dismissed without costs, following the *Carrick-fergus case* (21 L. T. N. S. 356; 1 O'M. & H. 264). *East Elgin*, 760.

22. The petitioner was allowed his costs, but not the costs of the charges which he failed to establish. *Cornwall* (3), 803.

See also pp. 187, 576.

CUSTOM OF THE COUNTRY. *See* pp. 47, 376, 625, 764.

DELEGATES TO CONVENTION. *See* pp. 187, 387, 420.

DEPUTY RETURNING OFFICERS. *See* pp. 519, 725, 764, 785.

DISQUALIFICATION.—(1.) **Of Candidate.**—1. The respondent while canvassing had refreshment for his men and two horses at a tavern for part of a day and a night, for which

he paid the tavern-keeper $5, and next day $5 more, in all $10, without asking for a bill. The bill would have amounted to about $3. The respondent stated that the tavern-keeper was an old friend of his, and was just starting in business, and that he thought it right to pay him as it were a compliment on his first visit to his tavern, and that he believed he would have done the some thing if it was not election time. *Held*, that being an isolated case in an election contest, free from profuse expenditure, and this being a quasi-criminal trial involving grievous results to the respondent if found a corrupt practice, such payment was not—after the explanations of the respondent—an act of bribery. *Glengarry*, 8.

2. The respondent entrusted about $700 to an agent for election purposes without having supervised the expenditure. *Held*, that this did not make him personally a party within 34 Vic., cap. 3., sec. 46 to every illegal application of the money by the agent, or by those who received money from him. But if a very excessive sum had been so entrusted to the agent, the presumption of a corrupt purpose might have been reasonable. *South Grey*, 52.

3. A candidate in good faith intended that his election should be conducted in accordance both with the letter and the spirit of the law; and he subscribed and paid no money, except for printing. Money, however, was given by friends of the candidate to different persons for election purposes, who kept no account or vouchers of what they paid. *Held*, that bribery would not be inferred as against the candidate, who neither knew nor desired such a state of things, from the omission of these subordinate agents to keep an account of their expenditure, especially as the law was new, and contained no provision similar to the Imperial statute, which requires a detailed statement of expenditure to be furnished to the returning officer. But it is always more satisfactory to have the expenditure shown by proper vouchers; and if money is paid to voters for distributing cards, or for teams, or for refreshments, these will be open to attack, and judges will be less inclined, as the law becomes known, to take a favorable view of conduct that may bear two constructions, one favorable to the candidate and the other unfavorable. *East Toronto*, 70.

4. The respondent, a postmaster in the service of the Dominion of Canada, became a candidate at an election on the 14th and 21st March, 1871, and was elected. On the 11th March he resigned his office of postmaster, which was accepted by the Postmaster-General on the 13th of March. His accounts with the Post Office Department were closed, and his successor appointed after the election. Evidence of the notoriety of the alleged disqualification of the respondent was given, which was that such alleged disqualification was a matter of talk, and that all the people at the meeting for the nomination of candidates were supposed to be aware of the supposed difficulty as to such disqualification. *Held*, that even if the respondent was disqualified for election, the Judge could not on such evidence declare that the electors voting for the respondent had voted perversely, and had therefore thrown away their votes, so as to entitle the petitioner to claim the seat. *West York*, 156.

5. Before subjecting a candidate to the penalty of disqualification, the Judge should feel well assured, beyond all possibility of mistake, that the offence charged is established. If there is an honest conflict of testimony as to the offence charged, or if acts or language are reasonably susceptible of two interpretations, one innocent and the other culpable, the Judge is to take care that he does not adopt the culpable interpretation unless, after the most careful consideration, he is convinced that in view of all the circumstances it is the only one which the evidence warrants his adopting as the true one. *Welland* (2), 187.

6. On a charge that the respondent offered to bribe the wife of a voter by a "nice present," if she would do what she could to prevent

her husband from voting, three witnesses testified to the offer; the respondent denied, and another witness who was present heard nothing of the offer. On this evidence, and there being no proof that the witnesses in support of the charge were acting from malicious motives or corrupt expectation, nor any evidence impeaching their veracity, the charge was held proved. *Halton*, 283.

7. The respondent appealed to the Court of Appeal on the above charge of personal bribery. *Held*, that as the Judge trying the petition had found that the respondent had made the offer to the wife of the voter in the manner above stated, such an offer was a promise of a "valuable consideration," within the meaning of the bribery clauses of 32 Vic., c. 21. *Ibid.*

8. On the polling day, and during the hours of polling, the respondent drove up to a tavern at C., where he met one S., a member of the above mentioned committee, and addressing him or the assembled people, said, "Boys, this is the first time I came to C. when I dare not treat, and some one will have to treat me." S. replied that he would treat, and, with the respondent and 30 or 50 people, went into the tavern, where S. treated some of the people, and the respondent drank with the rest. *Held*, (1) That going into the tavern for the purposes of the treat, when the law directed that such tavern should be kept closed, and joining in and accepting such treat, was a literal as well as a substantial violation of the law, and a corrupt practice. (2) That the concurrence of the respondent in the commission of such corrupt practice made him liable to the disqualification imposed by the statute for "a corrupt practice committed with the actual knowledge and consent of a candidate." *South Wentworth*, 343.

9. *Per Burton and Patterson*, JJ. A.—The 2nd subsec. of s. 3 of 36 Vic., c. 2, applies equally to the elected and defeated candidates at an election; and, if found assenting parties to any practice declared by the statute to be corrupt, each of them is liable to the disqualifications mentioned in the statute. *Ibid.*

10. The respondent, during polling hours on the polling day, met one P., a supporter of the opposing candidate, and told him he would like a drink; and both of them, not thinking it illegal, went to a tavern, and the bar being closed, P. treated the respondent in the hall of the tavern. *Held*, by the Court of Appeal (reversing *Gwynne*, J.), that the receiving of a treat by the respondent during the hours of polling was a corrupt practice, and avoided the election. *North Grey*, 362.

11. The wife of one S., a voter, had been injured some years before the election by the horses of the respondent; and in 1872 the respondent gave S. compensation for the injury partly by cancelling a debt and partly in cash, for which S. signed a receipt "in full of all accounts and claims whatsoever." The respondent canvassed S. during the election, saying, "I would like to have you with me at the election," but S. declined, expressing dissatisfaction with the compensation made for the injury to his wife, to which the respondent replied that he was able to do, and could do, what was right. Afterwards the respondent sent his salesman to the wife of S., who told her that the respondent was still able to do justice, to which she replied she would write a letter, which she did, and in which she referred to her husband's vote. After the election the respondent gave S. $30 partly by cancelling a debt and partly in cash. The respondent denied that he gave S. to understand that he would give him anything to induce him to vote for him at the election. *Held*, by the Court of Appeal (affirming *Gwynne*, J.), that the evidence showed that an indirect offer of money or other valuable consideration was made by the respondent to S., to induce him to vote for the respondent. *Lincoln*, 391.

12. At a late hour on the day preceding the election some agents of the respondent determined to resort to bribery, and they carried

out such determination at an early hour on the morning of the polling day. There was no evidence of the respondent's knowledge of, or consent to, this act of his agents. *Held* (reversing *Gwynne*, J.), that the shortness of the interval between the resolve and the execution of the bribery, which was carried out at a place several miles away from where the respondent lived, rendered improbable the fact of the respondent's actual knowledge of such bribery. *Ibid.*

13. The respondent stated at a public meeting of the electors with reference to an alleged local grievance, that he understood it to be the constitutional practice, here and in England, for the Ministry to dispense as far as practicable the patronage of the constituency on the recommendation of the person who contested the constituency on the Government side; and that he, being a supporter of the Government, would have the patronage in respect to appropriations and appointments whether elected or not. *Held*, that the respondent by such words did not offer or promise directly or indirectly any place or employment, or a promise to procure place or employment, to or for any voter, or any other person to induce such voter to vote, or refrain from voting. *Muskoka*, 458.

14. The evidence showed that extensive bribery was practised by the agents of the respondent and by a large number of persons in his interest, but no acts of personal bribery were proved against him, and he denied all knowledge of such acts. It was in evidence that he had warned his friends, during the canvass, not to spend money illegally. The Judge (*dubitante*) held that no corrupt practice had been committed with the respondent's knowledge or consent, and avoided the election for corrupt practices by the respondent's agents. *London*, 560.

15. On appeal to the Court of Common Pleas, it was *held*, (1) that the circumstantial evidence in this case was sufficient to show that corrupt practices had been committed by the respondent's agents with his knowledge and consent. (2) That wilful intentional ignorance is the same as actual knowledge. (3) That the assent of a candidate to the corrupt acts of his agents may be assumed from his non-interference or non-objection when he has the opportunity. And such candidate's knowledge of and assent to the corrupt acts of his agents, may be established without connecting him with any particular act of bribery. *Ibid.*

16. The respondent, in a constituency where 642 persons voted, received 336 votes, and his election expenses were about $2,000. The money was entrusted by the respondent to one G., with a caution to see that it was used for lawful purposes only. About $1,200 of this money was given by G. to one W., who distributed it to several persons in sums of $40, $100, $200 and $250. No instructions as to expenditure were given by G. to W., or by W. to the persons amongst whom he distributed the money; and by the latter several acts of bribery were committed. The respondent publicly and privately disclaimed any intention of sanctioning any illegal expenditure; but made no inquiries after the election as to how the money had been spent until a week or two before the election trial. He denied any act of bribery, direct or indirect, or any knowledge thereof; and no proof was given of a personal knowledge on his part of any of the specific wrongful acts or payments proved to have been committed by the persons amongst whom his money had been distributed. *Held*, that under the peculiar circumstances of the respondent's canvass, and on a review of the whole evidence, the respondent's emphatic denial of any corrupt motive or intention should be accepted. *Niagara*, 568.

17. The respondent was charged with using means of corruption at his election (1) by giving up a promissory note and also $20 to one M., on condition of M. and his sons voting for him; the charge depended upon the contradictory oaths of M. and the respondent; (2) by giving

a large subscription to an election fund, some of which was expended for illegal purposes; and (3) by subscriptions to churches. The respondent denied any corrupt motive in these subscriptions. The Election Judge, on the evidence, found that the respondent was not personally guilty of corrupt practices, but he avoided the election on the ground of bribery by agents. *South Huron*, 576.

18. From the judgment on the personal charges the petitioner appealed; but the Court, on a review of the evidence, declined to set aside the finding of the Election Judge. The appeal was dismissed without costs, as there were strong grounds for presenting it. *Ibid.*

19. *Per Hagarty*, C. J.—Candidates and agents should select less suspicious seasons than election times for exercising their liberality towards charitable and religious objects. *Ibid.*

20. The respondent was charged with corrupt practices, in that, when canvassing one C., a voter who said he would not vote unless he was paid, he said he was not in a position to pay him anything, but that if C. would support him, one of his (the respondent's) friends would come and see about it. The respondent, as he was leaving the voter's house, met one K., a supporter, who, after some conversation, went into C.'s house and gave him $5 to vote for the respondent. The charge depended upon the evidence of the voter C. and his wife. The respondent denied making such a promise; and he was sustained by K. as to a conversation outside C.'s house, in which the respondent cautioned K. not to give or promise C. any money. The Election Judge on the evidence found that the respondent was not personally implicated in the bribery of the voter C. by K. *Centre Wellington*, 579.

21. Before an Election Judge finds a respondent or any other person guilty of a corrupt practice involving a personal disability, he ought to be free from reasonable doubt. *Ibid.*

22. It is a general rule that no man can be treated as a criminal, or mulcted in penal actions for offences which he did not connive at; and it is settled law that enactments are not to be given a penal effect beyond the necessary import of the terms used. But the Election Laws are not to be so limitedly construed by an Election Judge; and for civil purposes they are more comprehensive, and reach a candidate whose agents bribe in his behalf, with or without his authority. Where the disqualification of a candidate is sought these laws are to be construed as any other penal statutes, and the candidate must be proved guilty by the same kind of evidence as applies to penal proceedings. *Kingston*, 625.

23. Money had been contributed by the respondent and by his friends for the purposes of the election, which had been placed in the hands of one C., a personal and political friend of respondent, who gave it without any instructions or warnings to such committee-men as applied for it. A great deal of this money was spent in corrupt purposes, in bribery, and in treating, to the extent of avoiding the election. The respondent in his evidence stated that he did not, directly or indirectly, authorize or approve of or sanction the expenditure of any money for bribery, or a promise of any for such purpose, nor did he sanction or authorize the keeping of any open house, and that he was not aware that any open houses had been kept, and that he always impressed on everybody that they must not violate the law. There was no affirmative evidence to show that the money which the respondent knew had been raised for the purposes of the election was so large that as a reasonable man he must have known that some portion of it would be used for corrupt purposes. *Held*, that looking at the whole case, and at this branch of it, as a penal proceeding, the respondent should not be held personally responsible for the corrupt practices of his agents.—*Ibid.*

24. An election was held in January, 1874, under the Act of

1873, at which the petitioner and the respondent were candidates, and at which the respondent was elected. This election was avoided on the ground of corrupt practices by agents of the respondent, committed without his knowledge or consent (*ante* p. 547). A new election was held, under the Act of 1874, at which the petitioner and the respondent were again candidates, when the respondent was again elected. Thereupon another petition was presented, charging that the respondent was guilty of corrupt practices at this last election: that he was ineligible by reason of the corrupt acts of his agents at the former election; that persons reported guilty of corrupt practices at the former election trial had improperly voted at the last election; and claiming the seat for the petitioner. *Held*, on preliminary objections, that the two elections were one in law; and it was not material that they had been held under different Acts of Parliament. *Cornwall* (2), 647.

25. That the respondent was not ineligible for re-election, as the corrupt practices of his agents at the former election had been committed without his knowledge or consent. *Ibid.*

26. The respondent gave certain gifts and charities to a religious community, a church, and certain local associations, none of which were political; the election was never mentioned. *Held*, that where charitable donations are given generally, and not with a view to influence any individual voter, they will not vitiate an election. There must be such large and indiscriminate gifts as to leave no doubt on any one's mind that the effect had been to constitute general bribery; and there was no evidence of such gifts or expenditure in this case. *South Ontario*, 751.

—— (2) **Of Agent.**—The election having been declared void on account of the corrupt practices of an agent of the respondent, the Judges acting as a Court for the trial of illegal acts committed at the election, after notice to such agent, granted an order for the punishment of such agent by fine and disqualification. *Stormont* (2), 537.

See also p. 238.

—— (3) **Of Petitioner.**—1. An objection to the *status* of a petitioner cannot be taken by preliminary motion. *Dufferin*, 529.

2. A petitioner in an election petition who has been guilty of corrupt practices at the election complained of, does not thereby lose his *status* as a petitioner. *Ibid.*

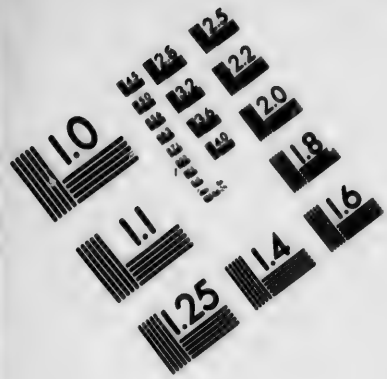
3. Except where there are recriminatory charges against the unsuccessful candidate, or for the purpose of declaring the petitioner's vote void on a scrutiny, the conduct of a petitioner at an election cannot be inquired into. And in this case there is no distinction between a candidate-petitioner and a voter-petitioner. *Ibid.*

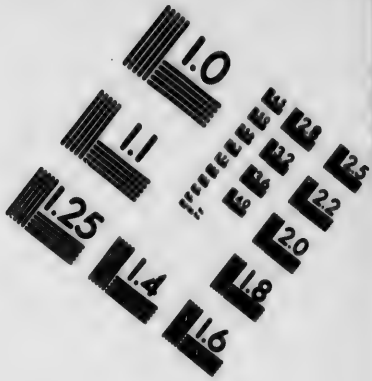
4. *Semble*, That if the petitioner in this case was proved at the trial of the election petition to have been guilty of corrupt practices at the election complained of, the petition could not be dismissed. *Ibid.*

5. A duly qualified voter is not disqualified from being a petitioner, on the ground that he has been guilty of bribery, treating or undue influence, during the election. *North Simcoe*, 617.

6. Disqualifications from corrupt practices on the part of a voter or candidate arise after he has been found guilty, and there is no relation back. *Ibid.*

7. In order to disqualify the petitioner from acting as such, the respondent offered to prove (1) that the petitioner had been reported by the Judge trying a former election petition as guilty of corrupt practices; (2) that the petitioner had in fact been guilty of corrupt practices at such election; and (3) that the petitioner had been guilty of corrupt practices at the election in question. *Held*, that such evidence, if offered, would not disqualify the petitioner as such. *Held*, further, that as the petitioner did not claim the seat, evidence could not be gone into for the purpose of personally disqualifying him. *Cornwall* (3), 803.





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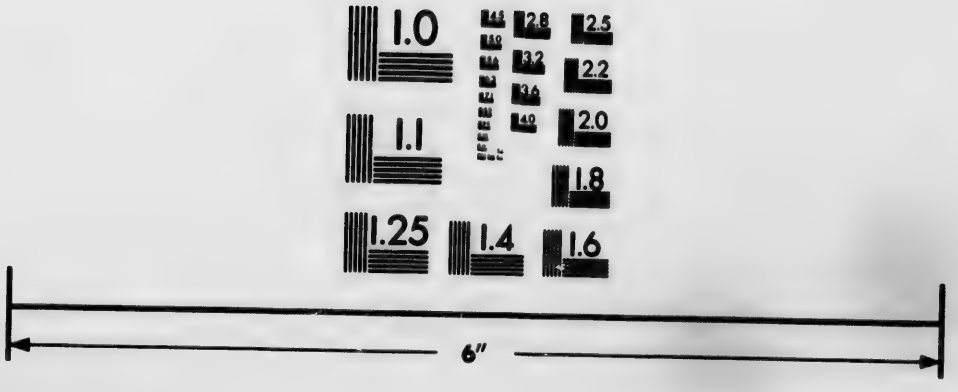

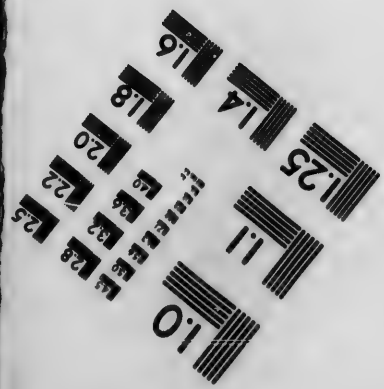

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DIVISION COURT BAILIFFS.—Observations on the impropriety of Division Court bailiffs canvassing voters during an election. *North Victoria*, 612.

ELECTION ACCOUNTS. — Where all the accounts and records of an election are intentionally destroyed by the respondent's agent, even if the case be stripped of all other circumstances, the strongest conclusions will be drawn against the respondent, and every presumption will be made against the legality of the acts concealed by such conduct. *South Grey*, 52.

ELECTION AGENT.—The Act 36 Vic., c. 2, ss. 7-12, requires that all election expenses of candidates shall be paid through an election agent; and the Act 38 Vic., c. 3, s. 6, requires the member-elect to swear that he had not paid and will not pay election expenses except through an agent, and that he "has not been guilty of any other corrupt practice in respect of the said election." Certain payments were made by the respondent personally, and not through an election agent. *Held*, that such payments were not corrupt practices; *Held* also, that the words "other corrupt practices" in the member's oath meant "any corrupt practice." *West Hastings*, 211.

ELECTION COMMITTEE DECISIONS.—The effect of s. 30 of 34 Vic., c. 3, O., is that the Judge is to act on the principles upon which election committees in England have acted where he has no light from the rules which his own professional experience supplies him with. And he is in addition to be bound by the decisions of the Rota Judges in England trying elections under acts similar to our own, in the same way as the Courts feel bound by their judicial decisions in other legal matters. *West Toronto*, 97.

ELECTION EXPENSES.—The difference between the Imperial statute (17 and 18 Vic., c. 102, s. 2, subs. 3, proviso) and the Ontario statute (32 Vic., c. 21, s. 67, subs. 3, proviso), as to "legal expenses" in elections, pointed out. *East Toronto*, 70.

See also pp. 70, 211, 785, 800.

ELECTION LAW.—1. The common law of England relating to Parliamentary elections is in force in Ontario, and applies to elections for the House of Commons. *Cornwall*, 547.

2. The Dominion Elections Act of 1874 does not affect the rights of parties in pending proceedings, which must be decided according to the law as it existed before the passing of that Act; sec. 20 of that Act referring to candidates at some future election. *North Victoria*, 584.

3. The Election Law is not to be construed as a penal law. *Kingston*, 625.

4. The Imperial and Dominion Election Laws, as to corrupt practices and their consequences, compared and considered. *Ibid.*

See also pp. 211, 800.

EMPLOYMENT OF VOTERS.—1 The friends of the candidate formed themselves into committees, and some of them voluntarily distributed cards and canvassed different localities, with books containing lists of voters, noting certain particulars as to promises, etc. These canvassers often met voters in public houses, and while there, according to custom, treated those whom they found there, and thus spent their money as well as their time. On this being represented to those who had charge of the money for election expenses, the latter, in several cases, reimbursed the canvassers. *Held*, that these general payments, if not exceeding what would be paid to a person for working the same time in other employments, would not be such evidence of bribery as to set aside an election. *East Toronto*, 70.

2. The *bona fide* employment and payment of a voter to canvass voters belonging to a particular religious denomination, or to the same trade or business, or to the same rank in life, or to canvass voters who only understand the French or Celtic

languages, is not illegal. *West Toronto*, 97.

3. The fact that such a voter has skill or knowledge and capacity to canvass would not make his employment illegal. *Ibid.*

4. The candidate is not restricted to his purely personal expenses, but may (if there is no intent thereby to influence voters, or to induce others to procure his return) hire rooms for committees and meetings, and employ men to act as canvassers, to distribute cars and placards, and to perform similar services in connection with the election. *Ibid.*

5. The respondent and one M. employed one H., a lawyer and professional public speaker and a voter, to address meetings in the respondent's interest, and promised to pay H.'s travelling expenses, if it were legal to do so. *Held* (by the Supreme Court, reversing *Armour*, J.), that such a promise was not bribery (4 Sup. Ct. R. 430). *North Ontario*, 785.

6. *Per Armour*, J.—The hiring of orators or canvassers at an election is illegal. *Ibid.*

See also pp. 97, 274, 458, 736.

EVIDENCE.—1. A notarial copy of an assignment in insolvency may be received in evidence under C. S. C. c. 80, s. 2. *Prescott*, 1.

2. The writ of election and return need not be produced or proved before any evidence of the election is given. *Stormont*, 21.

3. A witness called on a charge in the particulars of giving spirituous liquors in a certain tavern on polling day, during polling hours, cannot be asked if he got liquor, during polling hours, in other taverns. *South Oxford*, 243.

4. Evidence of admissions made by an agent after his agency had expired is inadmissible. *West Peterboro*, 274.

5. A witness stated that he had received a letter from a voter, asking for the fulfilment of an offer as to his vote, but the letter was not produced. *Held*, that it was not proved that the letter in question was written by the voter referred to. *North Middlesex*, 376.

6. The respondent was charged with several acts of corrupt practices. Each separate charge was supported by the evidence of one witness, and was denied or explained by the respondent. The learned Judge trying the petition held, that if each case stood by itself, oath against oath, and each witness equally credible, and there being no collateral circumstances either way, he would have found that each case was not proved; but as each charge was proved by a credible witness, the united weight of their testimony overcame the effect of the respondent's denial: and on the combined testimony of all the witnesses, he held the separate charges proved against the respondent. *Held*, by the Court of Appeal (reversing *Wilson*, J.), that in election cases, each charge constitutes in effect a separate indictment, and if a Judge on the evidence in one case dismisses the charge, the respondent cannot be placed in a worse position because a number of charges are advanced, in each of which the Judge arrives at a similar conclusion, and therefore the separate charges above referred to were held not sustained. *Muskoka*, 458.

7. A candidate, when examined as a witness at an election trial, may be asked his expenditure at former Provincial and Dominion elections at which he was a candidate. *North Simcoe*, 624.

8. A number of separate charges of corrupt practices against an agent of the respondent, based upon offers or promises, and not upon any act of such agent, each of which depended upon the oath of a witness to the offer or promise, but each one of which such agent directly contradicted, or gave a different color to the language, or a different turn to the expressions used, which quite altered the meaning of the conversations detailed, or constituted in effect a complete or substantial denial of the charges attempted to be proved against such agent. *Held*, (1) That although in acting on such conflicting testimony, where there was a separate opposing witness in each case to the testimony of the witness supporting the

charge, the Election Judge might be obliged to hold each charge as answered and repelled by the counter evidence, he could not give the like effect to the testimony of the same witness in each of the cases where the only opposing witness is confronted by the adverse testimony of a number of witnesses, who, though they do not corroborate one another by speaking to the same matter, are contradicted in each case by the one witness. (2) That the more frequently a witness is contradicted by others, although each opposing witness contradicts him on a single point, the more is confidence in such witness affected, until, by a number of contradicting witnesses, he may be disbelieved altogether. (3) That acting on the above, and on a consideration whether the story told by the witness in support of the charge is reasonable or probable in itself, the charges of corrupt practices against the agent of the respondent, set out in the judgment, were proved. *North Renfrew*, 710.

EXCESSIVE EXPENDITURE.—*See* pp. 52, 70, 547, 556, 568, 576.

FREE DINNER.—*See* p. 671.

HIRING RAILWAY TRAIN.—*See* pp. 50, 555.

HIRING TEAMS.—*See* CORRUPT PRACTICES (5).

ILLEGAL AND PROHIBITED ACTS.—1. "Illegal and prohibited acts relating to elections," in the definition of corrupt practices in the Controverted Elections Act 1871, are confined to bribery, hiring of teams, and undue influence, as defined by secs. 67 to 74 of the Election Act of 1868. *North York*, 62.

2. Violations of section 61 (treating at meetings) and section 66 (giving or selling liquor at taverns on polling day) are not corrupt practices within the meaning of the said Acts, unless committed in order to influence voters at the election complained of. *Ibid.*

3. The words "illegal and prohibited acts in reference to elections," used in sec. 3, mean such acts done in connection with, or to affect, or in reference to elections; not all acts which are illegal and prohibited under the election law. *Brockville*, 139.

See now R.S.O., c. 11, s. 2, subs. 6.

INTENT.—*See* pp. 8, 52, 70, 97, 139, 214, 269, 283, 362, 376, 391, 547, 612, 625, 660, 671.

IRREGULARITIES.—The neglect or irregularities of a deputy returning officer in his duties under the Dominion Elections Act, 1874, will not invalidate an election, unless they have affected the result of the election or caused some substantial injustice. *Monck*, 725.

See also pp. 519, 764.

LEGAL AND PERSONAL EXPENSES.—*See* pp. 70, 97, 785, 800.

MEMBER'S OATH.—*See* p. 211.

MEETINGS AT TAVERNS.—Meetings for promoting the respondent's election were held at public houses with the object of inducing the owners to support the respondent at the election, and because the weather was cold and meetings could not be held in the open air. Evidence was given by the petitioner that equally convenient places, and such as were more proper to be used for that purpose, could be obtained. *Held*, that as the respondent and his friends had a legitimate motive for holding their meetings at such houses, although their other motives might not be legitimate, no corrupt act had been committed. *Kingston*, 625.

MEETINGS FOR PROMOTING ELECTION.—*See* pp. 187, 205, 231, 245, 252, 283, 304, 362, 376.

NEW TRIAL.—1. Charges of corrupt practices, consisting of promises of money and of employment, were made against the respondent and one M., his agent. Both the respondent and his agent denied making any promises of money, but left the promises of employment unanswered; and the Judge trying the petition (*Draper*, C. J. A.) so found,

and avoided the election. Thereupon the respondent appealed to the Court of Appeal, and under 38 Vic., c. 3, s. 4, offered further evidence by affidavit, specifically denying any offer or promise, directly or indirectly, of employment. *Draper*, C. J. A., who tried the petition, having intimated to the Court that had the respondent and his agent made the explicit denial as to offers of money or employment which it appeared they had intended making, he would have found for the respondent. *Held*, under these circumstances, that the finding of the Election Court should be set aside, and that a new trial should be held before another Judge on the *rota*. *Peel*, 485.

2. Observations on the difference between an election trial and a trial at Nisi Prius. *Ibid.*

NOMINATION PAPER.—The nomination paper of B., one of the candidates at the election complained of, was signed by twenty-five persons, and had the affidavit of the attesting witness duly sworn to as required by the statute. The election clerk found that one of the twenty-five persons was not entered on the voters' lists, and thereupon the returning officer and election clerk compared the names on the nomination paper with the certified voters' lists in his possession, and on finding that only twenty-four of the persons who had so signed were duly qualified electors, he rejected B's. nomination paper, and returned the respondent as member elect. *Held*, (1) That as the policy of the law is to have no scrutiny, or as little as possible, in election cases, and to give the people a full voice in choosing their representatives, the defect in the nomination paper was one to which the returning officer should not have yielded. (2) That if the election had gone on the defect in the nomination paper would not, according to the 20th section of 37 Vic., c. 9, have affected the result of the election. *South Renfrew* (2), 705.

NOTICE ADMITTING BRIBERY.—*See* pp. 562, 624.

ORATORS AND CANVASSERS.—*See* p. 785.

PARTICULARS.—1. Where a question is raised as to the sufficiency of the notice of objection to voters, the Judge may amend the particulars, giving time to the party affected by the amendment to make inquiries. *Stormont*, 21.

2. At the trial of the petition, an amendment of the particulars as to corrupt practices will be allowed; and if the respondent is prejudiced by the surprise, terms may be imposed. *Welland*, 47.

3. An objection that the persons objected to were not owners, tenants, or occupants within s. 5, excluded an objection as to the value of the assessed property. *South Grenville*, 163.

4. Where a son was assessed at $700 for a farm in which he and his father were partners, in the proportion of three-fourths of the profits to the father and one-fourth to the son, and the objection to the voter was non-ownership. *Held*, that the partnership was established by the evidence, and in view of the objection taken, the vote was sustained.—*Smales' vote*. *Ibid.*

5. When the petition claimed the seat for the unsuccessful candidate on the grounds that (1) illegal votes and (2) improperly marked ballots were received in favor of the successful candidate; that (3) good votes and (4) properly marked ballots for the unsuccessful candidate were improperly refused; and that (5) the successful candidate and his agents were guilty of corrupt practices, and particulars of all such votes and ballots and corrupt practices were asked from the petitioner. *Held*, (1) As to the illegal votes, that the 7th General Rule prescribed the particulars of objected votes to be given, and the time of filing and delivering the same, and a special order was not therefore necessary. (2) As to the improperly marked ballots and improperly rejected ballots, the petitioner not having information respecting them, could not be ordered to deliver particulars of the same. (3) Particulars were ordered of the names, address,

abode and addition of persons having good votes, whose votes were improperly rejected at the polls; and particulars of the corrupt practices charged by the petitioner against the respondent and his agents. Beal *v.* Smith, L.R. 4 C.P. 145 (*Westminster case*), followed. *West Elgin*, 223.

6. Where particulars were delivered after the time limited by the order for particulars, and not returned, an application made at the trial to set them aside was refused; such application should have been made in Chambers before the trial. *North Victoria*, 252.

7. Particulars of recriminatory charges delivered after the time limited by the order for such particulars were allowed, but the petitioner was allowed to apply for time to answer the charges therein contained, and was given such costs as had been occasioned by the granting of the application. *Ibid.*

8. On the trial of an election petition, evidence was given by both sides on a charge not properly set out in the petitioners' particulars of corrupt practices. At the close of the evidence the respondent objected that the charge was not in the particulars, and that it was not verified by the affidavit of the petitioners: *Held*, (1) That the petitioners might amend their particulars, and that the charges in the petition were wide enough to cover the charge. (2) That as to this charge, the parties had in fact gone into evidence without particulars, and that the petitioners' affidavit verifying the particulars was not necessary. *Lincoln* (2), 489.

9. On an application by the petitioner to amend the particulars by adding charges of bribery against the respondent personally, and his agents, his attorney made affidavit that different persons had been employed to collect information; that the new particulars only came to his knowledge three days before the application; and that he believed they were material to the issues joined. *Held*, that as it was not shown that the petitioner or the persons employed could not have given the attorney the information long prior to the application, and as it was not sworn that the charges were believed to be true, nor were they otherwise confirmed, and as the amendment might have been moved for earlier, the application should be refused. *South Norfolk*, 660.

PARTIES.—The petition, besides charging the respondent with various corrupt acts, charged one of his agents with similar acts, and claimed that the agent was subject to the same disqualifications and penalties as a candidate. The prayer of the petition asked that this agent might be made a party to the petition, and that he might be subjected to such disqualifications and penalties. *Held*, (1) That there is no authority in the Election Acts or elsewhere, for making an agent of a candidate a respondent in a petition on a charge of personal misconduct on his part. (2) There is no authority given to the Election Court or the Judge on the *rota* to subject a person "other than a candidate" to such disqualifications. (3) The Judge's report to the Speaker as to those persons "other than the candidate," who have been proved guilty of corrupt practices, is not conclusive, so as to bring them within 34 Vic., cap. 3, sec. 49, and so render them liable to penal consequences. *South Oxford*, 238.

PAYMENT OF DEBT.—*See* pp. 97, 205, 252, 304, 612, 751, 785.

PERSONAL OBJECT OF AGENT.—*See* pp. 139, 262, 269.

PERSONATION.—*See* p. 274.

PETITION.—(1) **Bona Fides.**—A charge that the petition was not signed by petitioner *bona fide*, but that his name was used *mala fide* by other persons, is a matter of fact to be tried, and cannot be raised by preliminary objection. *North Simcoe*, 617.

—— (2) **Amendment.**—The Judge trying an election petition has power to amend the petition by allowing the insertion of any objection to the voters' lists used at the election. *Monck*, 154.

—— (3) **Withdrawal.**—The Court recommended the petitioner to withdraw his petition in this case; and on an application for that purpose, another elector having applied to be substituted as petitioner: *Held*, that as the Court of Appeal had been placed in possession of all the charges against the respondent, and of the evidence in support of them, and had recommended the withdrawal of the petition, and no sufficient additional grounds having been shown for such substitution of petitioner, the order for the withdrawal of the petition should be granted. *Peel*, 485.

—— (4) **Trial of.**—1. When a Rule of Court has been issued under the Controverted Elections Act, appointing a place for the trial not within the constituency the election for which is in question, the Judge by whom the petition is being tried has no power to adjourn, for the further hearing of the cause, from the place named in the Rule of Court to a place within such constituency. *South Grey*, 52.

2. The day appointed for the trial of an electi n petition may be altered to an earlier day by consent of the parties, and by an order of the Judge. *West Elgin*, 223.

PLEADING.—The 6th General Rule in Election Cases does not preclude the statement of evidence in the petition: it renders it unnecessary, and is intended to discourage such pleading. *South Oxford*, 238.

POSTMASTER.—*See* p. 158.

PRELIMINARY OBJECTIONS.—As the Ontario Act (R. S. O., c. 11) makes no provision similar to that in the Dominion Controverted Elections Act, 1874 (37 Vic., c. 10, Can.), limiting the time within which preliminary objections to an election petition should be taken, the special circumstances of each case must determine whether the preliminary objections have been taken with sufficient promptitude. *Dufferin*, 529.

See also pp. 1, 529, 531, 556, 577, 584, 617, 644, 647, 749, 803.

PRESENT (1) To Voter's Wife.—*See* pp. 97, 283, 736.

——(2) **To Voter's Relative.**—*See* pp. 8, 252.

PROPERTY QUALIFICATION.—1. A candidate may be a petitioner although his property qualification be defective, if it was not demanded of him at the time of his election. If he claims the seat, his want of qualification may be urged against his being seated, but he may still show that the respondent was not duly elected, if he so charge in his petition. *North Victoria*, 584.

2. *Held*, (1) As in the *North Victoria case* (*ante* p. 584), that the Dominion Elections Act of 1874 not being retrospective, the question of property qualification of candidates, at elections for members of the House of Commons held before the passing of the Dominion Election Act of 1873, can still be raised in pending cases. (2) That it is not necessary for an elector, demanding the property qualification of a candidate, to tender the necessary declaration for the candidate to make; the intention of the statute being that the candidate must prepare his own declaration. *Cardwell*, 644.

See now Dom. Elec. Act, 1874, s. 20.

RECEIVER OF TREAT.—*See* pp. 179, 245, 420.

RECOUNT OF BALLOTS.—*See* pp. 519, 764.

RECRIMINATORY CASE. 1. The respondent, on the opening of the case, charged that the petitioner was a candidate at the election, and as such candidate was guilty of corrupt practices, and therefore disqualified to be a petitioner. The Chief Justice, without deciding whether the respondent had the right to attack the qualification of the petitioner, allowed the evidence to be given, but *held* the same to be insufficient. *Prince Edward*, 45.

2. Where a charge of corrupt practices by way of a recriminatory case is alleged by a respondent against a petitioner, it may be reserved until the conclusion of the petitioner's case. *North Simcoe*, 50.

3. Where the right of the petitioner to claim the seat is decided adversely in one case, it is no prejudice to the respondent's case that other charges against the petitioner are not pronounced upon. *North Victoria*, 252.

4. Recriminatory charges are permitted in the interest of electors, in order to prevent a successful petitioner obtaining the vacated seat if he has violated any provision of the Election Law. *Ibid.*

See also pp. 529, 584, 617, 803.

REFRESHMENTS TO VOTERS.—*See* pp. 52, 205, 252, 671.

REFUSAL TO SWEAR.—*See* p. 780.

RESULT OF ELECTION.—*See* pp. 489, 530, 539, 705.

RETURNING OFFICER.—*Semble*, that the returning officer is both a ministerial and a judicial officer; and that he might decline to receive the nomination of persons disqualified by *status* or office, and also nomination papers signed by unqualified persons if he had good reasons for so doing. *South Renfrew* (2), 705.

SCRUTINY.—1. On a scrutiny the practice is for the person in a minority to place himself in a majority, and then for the person thus placed in a minority to strike off his opponent's votes. *Stormont*, 21.

2. The Court having compared the Voters' List of 1870 with the poll books used at the election in the Township of Hillier, found that 35 persons had voted for the respondent whose names were not on the list of 1870; and the names of such persons having been struck off the poll, the respondent was found to be in a minority; and the seat was thereupon awarded to the other candidate, he having obtained on the scrutiny a majority of the votes. *Prince Edward*, 160.

3. Where a petition claims the seat for the unsuccessful candidate, a scrutiny of votes may be ordered to be taken in each municipality by the Registrar acting for the Judge on the *rota*. *West Elgin*, 227.

4. During the scrutiny of votes the respondent abandoned the seat to his opponent, after his opponent had secured a majority of 8 votes, and agreed that such should stand as his opponent's majority, and that the Court should declare such opponent duly elected; and the same was ordered by the Court. *Ibid.*

5. During the progress of a scrutiny of votes, certain ballot and other papers were stolen from the Court, which had the effect of rendering the scrutiny useless. *Lincoln* (2), 489.

6. Particulars for a scrutiny of votes were delivered by the respondent objecting to certain voters, as (1) aliens; (2) minors; (3) not owners, tenants or occupants of the property assessed to them; and (4) farmers' sons not residing with their fathers upon the farm, as required by law. On a motion to strike out such particulars: *Held*, that under the "Voters' Lists Finality Act" (41 Vic., c. 21, s. 3), the legality of the votes so objected to could not be inquired into, and that the particulars should be struck out. *South Wentworth*, 531.

7. A petitioner claiming the seat on a scrutiny may show, as to votes polled for his opponent: (1) That the voter was not 21 years of age; (2) that he was not a subject of Her Majesty by birth or naturalization; (3) that he was otherwise by law prevented from voting; and (4) that he was not actually and *bona fide* the owner, tenant, or occupant of the real property in respect of which he assessed. *North Victoria*, 584.

See also p. 531, and 41 Vic., c. 21, O.

8. On a preliminary objection to a petition claiming the seat on a scrutiny, the Court declined to strike out a clause in the petition which claimed that votes of persons guilty of bribery, treating and undue influence, should be struck off the poll. The giver of a bribe, as well as the receiver, may be indicted for bribery. *Ibid.*

9. Evidence of corrupt practices committed by persons in the interest of both candidates at the previous election, may be given at the

trial of the second petition, with the view of striking off the votes of any such persons who may have voted at the second election. *Cornwall* (2), 647.

SECURITY.—The security in this case was offered, in the shape of a Dominion note for $1,000, to the Registrar of the Court of Chancery, who stated to the petitioners' solicitors that he could not receive it, but directed them to make payment of it through the Accountant of the Court in the same manner as moneys were usually paid into court. The solicitors then paid the money into the bank to the credit of the matter of the petition, according to the usual practice of the Court of Chancery. *Held*, that the deposit of the security, as required by the Act, was properly given. *North York*, 749.

SPEAKER (1) **Report to.** — The fact of persons having been reported by the Judge as guilty of corrupt practices at the former election, has not the effect of disqualifying them from voting at the second election. The report of the Judge is not as to them an adjudication, for voters are not, in a proper judicial sense, parties to the proceedings at an election trial. *Cornwall* (2), 647.

See also pp. 238, 502.

—— (2) **Certificate to.**—The Court cannot grant an interim certificate declaring an election void, as the statute contemplates only one certificate to the Speaker, certifying the result of the election trial. *Lincoln* (2), 489.

SPECIAL CASE.—1. A special case may be reserved for the opinion of the Court of Queen's Bench only when the Judge presiding at the election trial has a serious doubt as to what the law is, or believes that the Court might entertain a different opinion from that of the Election Judge. *North York*, 62.

2. *Quære*, whether, under 34 Vic., cap. 3, sec. 20, the Rota Judge has power, before the close of the case, to reserve questions for the Court. *Brockville*, 139.

3. Where a class of persons affected by the decision of a case is numerous, and the question involved is one of general importance, the Judge may reserve a special case for the opinion of the Court of Queen's Bench; and the Judge here decided to take that course. *West York*, 156.

See also p. 725.

STOLEN BALLOT PAPERS.—*See* p. 489.

SUBSTITUTION OF PETITIONER.—*See* p. 485.

TELEGRAMS.—The Court ordered the agent of a telegraph company to produce all telegrams sent by the respondent and his alleged agent during the election, reserving to the respondent the right to move the Court of Appeal on the point; the responsibility as to consequences, if it were wrong so to order, to rest on the petitioner. *South Oxford*, 243.

TENDERED VOTES.—1. Where a voter offered to vote at a poll, but did not ask for or put in a tendered ballot paper. *Held*, that the Ballot Act required the vote to be given secretly, and that the parol declaration of the voter as to his vote could not be received in order to add it to the poll.—*Record's vote. Lincoln* (2), 500.

2. The names of certain persons who were qualified to vote at the election appeared on the last revised assessment roll of the municipality, but were omitted from the voters' list furnished to the deputy returning officer and used at the election. They tendered their votes at the poll, but their votes were not received; and a majority of them stated to the deputy returning officer that they desired to vote for the petitioner. The petitioner had a majority without these votes. *Held*, by the Court of Queen's Bench (affirming *Wilson*, J.), no ground for setting aside the election. *North Victoria* (2), 671.

3. *Semble*, (1) That, though the only mode of voting is by ballot, if it became necessary to decide the

election by determining the right to add these votes, it should be determined in that manner most consistent with the old law, and which would have saved the disfranchisement of electors, and the necessity of a new election. (2) If the right of voting can only be preserved by divulging from necessity for whom the elector intended to vote, the necessity justifies the declaration the elector is forced to make, as there is nothing in the Act which prevents the elector from saying for whom he intends to vote. (3) An elector duly qualified, who has been refused a ballot paper by the deputy returning officer, cannot be deprived of his vote; otherwise it would follow that because the deputy returning officer had wrongfully refused to give such elector a ballot paper, his vote would not be good in fact or in law. *Ibid.*

See also p. 780.

TAVERN-KEEPER.—*See* pp. 8, 139, 187, 190, 231, 252, 269, 362, 391, 420, 500, 671.

TREATING.—*See* CORRUPT PRACTICES (3).

UNDUE INFLUENCE.—*See* CORRUPT PRACTICES (4).

VOTER.—1. The Election Law of 1868, by the term "owner," gives to a husband whose wife has an estate for life or a greater estate, the right to vote in respect of his wife's property; and that the petitioner having that qualification, and being in possession of his wife's estate, was held entitled to petition. *Prescott*, 1.

2. The name of the voter being on the poll book is *prima facie* evidence of his right to vote. The party attacking the vote may either call the voter, or offer any other evidence he has on the subject. *Stormont*, 21.

3. A voter being duly qualified in other respects, and having his name on the roll and lists, but by mistake entered as tenant instead of owner or occupant, or *vice versa*, is not disfranchised merely because his name was entered under one head and not another. *Ibid.*

4. Where father and son live together on the father's farm, and the father is in fact the principal to whom money is paid, and who distributes it as he thinks proper, and the son has no agreement binding on the father to compel him to give the son a share of the proceeds of the farm, or to cultivate a share of the land, but merely receives what the father's sense of justice dictates: *Held*, the son has no vote.—*Eamon's vote. Ibid.*

5. In a milling business where the agreement between the father and son was, that if the son would take charge of the mill, and manage the business, he should have a share of the profits, and the son, in fact, solely managed the business, keeping possession of the mill, and applying a portion of the proceeds to his own use: *Held*, that the son had such an interest in the business, and, while the business lasted, such an interest in the land, as entitled him to vote.—*Bullock's vote. Ibid.*

6. Where a certain occupancy was proved on the part of the son distinct from that of the father, but no agreement to entitle the son to a share of the profits, and the son merely worked with the rest of the family for their common benefit: *Held*, that although the son was not merely assessed for the real but the personal property on the place (his title to the latter being on the same footing as the former), he was not entitled to vote.—*Raney's vote. Ibid.*

7. Where the objection taken was, that the voter was not at the time of the final revision of the assessment roll the *bona fide* owner, occupant or tenant of the property in respect of which he voted; and the evidence showed a *joint* occupancy on the part of the voter and his father on the land rated at $240: *Held*, that the notice given did not point to the objection that if the parties were joint occupants they were insufficiently rated, and as the objection to the vote was not properly taken, the vote was held good.—*Baker's vote. Ibid.*

8. Where the father had made a will in his son's favor, and told the

son if he would work the place and support the family he would give it to him, and the entire management remained in the son's hands from that time, the property being assessed in both names—the profits to be applied to pay the debt due on the place: *Held*, that as the understanding was that the son worked the place for the support of the family, and beyond that for the benefit of the estate, which he expected to possess under his father's will, that he did not hold immediately to his own use and benefit, and was not entitled to vote.—*Weort's vote. Ibid.*

9. Where the voter had only received a deed of the property on which he voted on the 16th August, 1870, but previous to that date had been assessed for and paid taxes on the place, but had not owned it: *Held*, that not possessing the qualification at the time he was assessed, or at the final revision of the roll, he was not entitled to vote.—*Cuhey's vote. Ibid.*

10. Where the voter had been originally, before 1865 or 1866, put upon the assessment roll merely to give him a vote, but by a subsequent arrangement with his father, made in 1865 or 1866, he was to support the father, and apply the rest of the proceeds to his own support: *Held*, that if he had been put on originally merely for the purpose of giving a vote, and that was the vote questioned, it would have been bad; but being continued several years after he really became the occupant for his own benefit, he was entitled to vote, though originally the assessment began in his name merely to qualify him.—*Gore's vote. Ibid.*

11. Where the voter was the equitable owner, the deed being taken in the father's name but the son furnishing the money, the father in occupation with the assent of his son, and the proceeds not divided: *Held*, that being the equitable owner, notwithstanding the deed to the father, he had the right to vote. *Held* also, that being rated as tenant instead of owner did not affect his vote.—*Blair's vote. Ibid.*

12. Where the voter and his son leased certain property, and the lease was drawn in the son's name alone, and when the crops were reaped the son claimed they belonged to him solely, the voter owning other property, but being assessed for this only and voting on it: *Held*, that although he was on the roll and had the necessary qualification, but was not assessed for it, he was not entitled to vote.—*Hill's vote. Ibid.*

13. Where the voter was the tenant of certain property belonging to his father-in-law, and before the expiration of his tenancy the father-in-law, with the consent of the voter (the latter being a witness to the lease), leased the property to another, the voter's lease not expiring until November, and the new lease being made on the 28th March, 1870: *Held*, that after the surrender by the lease to which he was a subscribing witness, he ceased to be a tenant on the 28th of March, 1870, and that to entitle him to vote he must have the qualification at the time of the final revision of the assessment roll, though not necessarily at the time he voted, so long as he was still a resident of the electoral division.—*Rupert's vote. Ibid.*

14. Where a verbal agreement was made between the voter and his father in January, 1870, and on this agreement the voter from that time had exercised control, and took the proceeds to his own use, although the deed was not executed until September following: *Held*, entitled to vote.—*Gollinger's vote. Ibid.*

15. Where a voter properly assessed, who was accidentally omitted from the voters' list, for polling division No. 1, where his property lay, and entered on the voters' list for polling division No. 2, voted in No. 1, though not on the list, his vote was held good. *Brockville*, 129.

16. A.'s name appeared on the assessment roll and voters' list as owner, but no property appeared opposite his name; just below A.'s name, the name of B. was entered as tenant, with certain property following it, but B.'s name was not

bracketed with A.'s. Evidence was admitted to show that A. owned the property next below his name, for which B. his tenant was assessed as tenant, and A.'s vote was held good. —*Baker's vote. Ibid.*

17. The widow of an intestate owner continuing to live on the property with her children, who own the estate and work and manage it, should not, till her dower is assigned, be assessed jointly with the joint tenants, nor should any interest of hers be deducted from the whole assessed value. Where, therefore, four joint tenants and such doweress occupied property assessed for $900, the joint tenants were held entitled to the qualification of voters.—*Gilroy's vote. Ibid.*

18. Where a husband had possession of a lot for which he was assessed as occupant and his wife as owner, but which belonged to the wife's daughters by a former husband, his vote was held good.—*Whaley's vote. Ibid.*

19. Where the owner died intestate, and the husband of one of his daughters leased the property and received the rents, such husband was held not entitled to vote.—*Leslie's vote. Ibid.*

20. Where it was proved that for some time past the owner had given up the whole management of the farm to his son—retaining his right to be supported from the product of the place, the son dealing with the crops as his own, and disposing of them to his own use—the son's vote was held good.—*Caldwell, Moore, and Smith's votes. Ibid.*

21. Where it was proved that an agreement existed (verbal or otherwise) that the son should have a share in the crops as his own, and such agreement was *bona fide* acted on, the son being duly assessed, his vote was held good; the ordinary test being: had the voter an actual existing interest in the crops growing and grown? *Ibid.*

22. But where such crops could not be seized for the son's debt, the son was not entitled to vote.—*Francis' vote. Ibid.*

23. Where the agreement did not show what share in the crops the son was to have with his father, and it appeared to be in the father's discretion to determine the share, such son was not entitled to vote —*Johnson's vote. Ibid.*

24. Where a father was by a verbal agreement "to have his living off the place," the son being owner and in occupation with the father, the father was not entitled to vote. —*Wiltse's vote. Ibid.*

25. A tenant from year to year cannot create a sub-tenancy nor create a right to vote by giving another a share in the crops raised on the leased property.—*Dunham's vote, Ibid.*

26. Where a man occupied a house as toll collector, and not in any other right, he was not qualified to vote.—*McArthur's vote. Ibid.*

27. The right to vote is not to be taken away or the vote forfeited by the act of the voter unless under a plain and express enactment, for it is a matter in which others besides the voter are interested.—*Brockville*, 139.

28. Where two partners in business occupied premises the freehold of which was vested in one of them, and the assessment of the premises was sufficient to give a qualification to each, both partners were held qualified to vote.—*Fitzgerald's vote. South Grenville*, 163.

29. Where a father, the owner of a lot, told his son that he might have the lot and advised him to get a deed drawn, and the lot had been assessed to the son for 3 or 4 years, and was rented to a tenant by the father with the assent of the son, who paid to the father his wages but the father collected the rent. *Held*, that as there was nothing but a voluntary gift from the father to the son, without possession, the son's vote was bad.—*Lundy's vote. Ibid.*

30. Where a father had made a will of a lot to his son who was assessed for it, and the son took the crops except what was used by the father, who resided on the lot with his wife, the son residing and

working on another farm. *Held*, that the son had not such a beneficial interest in the lot as would entitle him to vote.—*Mullin's vote. Ibid.*

31. Where A., who resided out of the riding, had made a contract in writing to sell to B. the property assessed to him as owner, but had not at the time of the election executed the deed, B. having been in possession of the property for several years under agreements with A. *Held*, that A. was a mere trustee for the purchaser, and had therefore no right to vote.—*Holden's vote. Ibid.*

32. Where a vendor before the revision of the assessment roll had conveyed and given possession of the property to a purchaser, and such purchaser had afterwards given him a license to occupy a small portion of the property, such vendor was held not entitled to vote.—*Noblin's vote. Ibid.*

33. Where the owner of mortgaged property died intestate, leaving a widow and sons and daughters, and the property was sold under the mortgage, and the deed made to the widow, but three of the sons furnished some of the purchase money, and all remained in possession, and the eldest son was assessed as occupant. *Held*, that as the eldest son did not show that the property was purchased for him, and the presumption from the evidence being that it was bought for the mother, such eldest son had no right to vote.—*Morrow's vote. Ibid.*

34. A trustee under a will having no present beneficial interest in the real property assessed to him, was held not entitled to vote.—*Jones' vote. Ibid.*

35. Where a voter was assessed for property which he sold on the 27th February, 1871, before the revision of the Assessment Roll, and was not assessed for other property of which he was in possession as owner or tenant, he was held not entitled to vote.—*Place's vote. Ibid.*

36. The mistake of the number of the lot does not come under the same rule as the mistake of a name, as the latter is provided for in the statute and the voter's oath. *Ibid.*

37. Where one of two joint owners was assessed for property at $200, he was not entitled to vote. *Ibid.*

38. A voter whose qualification is successfully attacked may show a right to vote on income; but in such case he must prove that he has complied with all the requirements of the Act which are essential to qualify him to vote on income.—*Gray's vote. Lincoln* (2), 500.

39. A voter was assessed in two wards of a town; he parted with his property qualification in one of the wards, but voted in such ward. *Held*, that the vote might be supported on the qualification in the other ward, which, if the voter had voted on it, would have made it necessary for him to vote in another polling division.—*Gibson's vote. Ibid.*

40. A person assessed for land he does not own, though receiving rent for it from a tenant, is not qualified to vote.—*Clark's vote. Ibid.*

41. By the Dominion Elections Act of 1873, the qualification of voters to the House of Commons was regulated by the Ontario Election Acts. *North Victoria*, 584.

42. The respondent was elected by four votes. At the election the names of twelve persons who were entered on the assessment roll as "freeholders" appeared on the voters' lists, owing to a printer's mistake, as "farmers' sons." Their votes were challenged at the poll, and they were required by the petitioner's scrutineers to take the farmers' sons' oath, which they refused. Subsequently they offered again to vote and to take the owner's oath, and the deputy returning officer, who was also clerk of the municipality, knowing them, gave them ballot papers and allowed them to vote. *Held*, (1) That having been rightly entered on the assessment roll, the mistake as to their qualifications on the voters' list did not disfranchise them. (2) That their refusal to take the farmers' sons' oath was not a refusal to take the oath required by law. A refusal to swear is when a voter refuses to take the oath appropriate to his proper description. (3) That having a right to vote, although

they voted in a wrong capacity, their votes could not be struck off. *Prescott*, 780.

See also p. 671.

VOTERS' LISTS. — 1. Special report, and observations on making the revised lists of voters final, except as to matters subsequent to the revision. *Stormont*, 21.

2. The proper list of voters to be used at an election is "the last list of voters made, certified, and delivered to the Clerk of the Peace at least one month before the date of the writ to hold such election." *Monck*, 154.

3. An irregular voters' list had been used in one of the townships in the Electoral Division; but that the result of the election had not been affected thereby, and that the election was not avoided. *Ibid.*

4. *Held*, following the *Monck case* (32 Q. B., 147, *ante* p. 154), that the list of voters to be used at an election must be the list made, certified and delivered to the Clerk of the Peace at least one month before the date of the writ to hold such election. *Prince Edward* (2), 161.

5. The list of voters used at the election in the Township of Hillier was not filed until the 28th November, 1871, and the writ of election was dated 9th December, 1871. *Held*, that the list of voters of 1871 should not have been used. *Ibid.*

6. *Held*, that the effect of the Voters' Lists Finality Act, 1878, was to render the voters' lists final and conclusive of the right of all persons named therein to vote, except where there had been a subsequent change of position or status by the voter having parted with the interest which he had (or by the assessment roll appeared to have) in the property, and becoming also a non-resident of the electoral division. *South Wentworth*, 531.

7. Mistakes in copying the voters' lists should not deprive legally qualified voters of their votes any more than the names of unqualified voters being on the list would give them a right to vote. But the mere fact that the lists were not correct alphabetical lists, or had not the correct number of the lot, or were not properly certified, or the omitting to do some act as to which the statute is directory, is no ground for setting aside an election, unless some injustice resulted from the omission, or unless the result of the election was affected by the mistake. *North Victoria*, 584.

8. The Court will not go behind the voters' lists to inquire whether a voters' name was entered upon the assessment roll in a formal manner or not. *North Simcoe*, 612.

9. *Semble*, That the provisions of the law as to how voters are to be entered on the voters' list in respect to their property, and as to the manner in which they are to vote, are directory. *Prescott*, 780.

VOTING BY BALLOT.—One B., a voter who could neither read nor write, came into a polling booth, and in the presence of the deputy returning officer asked for one not present to give him instructions how to mark his ballot. The deputy returning officer gave the voter a ballot paper, who then stated he wished to vote for the respondent. One W., an agent of the respondent, in the polling booth, took the pencil and marked the ballot as the voter wished, and the voter then handed it to the deputy returning officer. No declaration of inability to read or write was made by the voter. *Held*, that no one but the deputy returning officer was authorized to mark a voter's ballot, or to interfere with or question a voter as to his vote; and the deputy returning officer permitting the agent of a candidate to become acquainted with the name of the candidate for whom the voter desired to vote, violated the duty imposed on him to conceal from all persons the mode of voting, and to maintain the secrecy of the proceedings. *Halton*, 283.

See also pp. 500, 519, 531, 671, 725, 780.

WEIGHT OF EVIDENCE.—*See* pp. 8, 97, 187, 556, 579.

WITNESSES OUT OF COURT.—*See* p. 243.

REPORTS

OF THE

DECISIONS OF THE JUDGES

FOR THE TRIAL OF

ELECTION PETITIONS

IN ONTARIO,

RELATING TO ELECTIONS TO THE

LEGISLATIVE ASSEMBLY OF ONTARIO,
1871-5-9;

AND TO THE

HOUSE OF COMMONS OF CANADA,
1874-8.

BY

THOMAS HODGINS, Q.C.

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TABLE OF CASES.

TABLE OF STATUTES AND CASES THEREUNDER.

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